Supreme Court of the United States

OCTOBER TERM, 1970

No. 759

UNITED STATES OF AMERICA,

Appellant,

—v.—

ARMOUR & COMPANY AND GREYHOUND CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

INDEX

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

No. 103

UNITED STATES OF AMERICA, APPELLANT

v.

ARMOUR & COMPANY AND GENERAL HOST CORPORATION

On Appeal from the United States District Court for the Northern District of Illinois

APPELLEE GENERAL HOST CORPORATION'S SUGGESTION OF MOOTNESS AND MOTION TO DISMISS APPEAL

General Host Corporation moves the Court to dismiss as moot the appeal of the United States from the judgment of the district court dismissing the Government's petition to make General Host Corporation ("General Host") a party to the case of *United States* v. *Swift & Company et al.*, Civil Action No. 58 C 613 (N.D. Ill.) and for an injunction against further acquisition by General Host of stock in Armour & Company ("Armour").

On Thursday, May 14, 1970, the Interstate Commerce Commission granted the Application of the Greyhound Corporation ("Greyhound") for Authority under Sections 5(3), 21a, and 214 of the Interstate Commerce Act to Issue Securities (Finance Docket No. 26056), thus permitting Greyhound to consummate an agreement dated October 27, 1969 with General Host to purchase all of General Host's stock interest in Armour. Later

that day the transaction was completed. Pursuant to the agreement General Host transferred all of its interest in Armour to Greyhound, and resignations from the Board of Directors of Armour of all directors of Armour nominated by General Host have been submitted.

The Government was advised in October, 1969 of the proposed sale to Greyhound of General Host's stock in Armour, and on November 6, 1969 was provided with a copy of the contract. Shortly thereafter, on November 17, 1969, the Government requested (and received) an extension of time for filing its brief on the merits in this case in order "to consider whether, in light of the agreement [between General Host and Greyhound], there is occasion for the Court to decide the case . . . ." (Letter to Honorable John F. Davis from the Solicitor General).

Since the proposed sale could not be consummated until the Interstate Commerce Commission authorized Greyhound to issue securities, the parties concluded that the General Host-Greyhound agreement did not itself moot the case, and this Court was so advised in oral argument on March 5, 1970.

Subsequently, however, the Government did determine that consummation of the transaction following favorable action by the Interstate Commerce Commission would moot the case, and it so advised the Commission in a document captioned "Additional Memorandum of the Department of Justice", which it filed on March 23, 1970, in Finance Dkt. No. 26056 *supra*. The Government there asked that the Commission withhold its decision on Greyhound's request until after this Court's ruling in the instant case, stating:

> Through its General Counsel Greyhound has advised us [by letter dated February 27, 1970] that it intends to consummate the transaction with General Host for Armour securities promptly upon receiving Commission approval. The result would be that the case in the Supreme Court would be mooted . . . . (pp. 4-5).

General Host agrees that consummation of the General Host-Greyhound transaction moots this case. The

only substantive relief sought by the Government was an injunction restraining General Host from "acquiring . . . additional shares of stock in Armour and from taking any action to exercise control over or to influence the business affairs of Armour, as long as General Host is engaged in businesses dealing in products listed in the Decree of February 27, 1920." Complete divestiture has now occurred; General Host holds no interest whatsoever in Armour. Since the acquisition of stock by General Host of a defendant meat-packer was a unique event, and there is no likelihood that it will recur, it is suggested that the issues presented to this Court on this appeal are moot and the appeal should be dismissed.

Respectfully submitted,

/s/ Herbert A. Bergson
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[Caption Omitted in Printing]

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FOR MOOTNESS AND APPLICATION OF THE UNITED STATES FOR INJUNCTIVE RELIEF PENDENTE LITE

The appellee General Host Corporation has filed a motion urging the Court to dismiss this case as moot because—in an extraordinary sequence of events that we shall describe—General Host has now transferred its stock in Armour & Company to Greyhound Corporation. For reasons that we elaborate, we believe that these events have not made the case moot and that the motion to dismiss should be denied.[1] In addition, we suggest that Greyhound's role with respect to the matters involved in this case is such that it should be made a party on remand and this Court should provide interim relief prohibiting Greyhound from increasing or utilizing its control over Armour until the legality of such control is determined.

INTRODUCTION

The basic issue in this appeal, which was argued on March 5, 1970, is whether the 1920 antitrust decree

[1] General Host suggests that the government is bound by the statement, in a document filed by Antitrust Division attorneys with the Interstate Commerce Commission, that consummation of the transfer of stock would moot the case. That statement was made without the knowledge or approval of the Solicitor General and was ill-advised and incorrect. Moreover, it was not essential to the Department's position before the Commission, which was primarily based upon the proposition—reflected also in *California* v. *Federal Power Commission*, 369 U.S. 482—that an administrative agency should not approve a transaction pending the conclusion of litigation that will determine its legality under the antitrust laws. In any event, questions of mootness, which go to jurisdiction, cannot be determined by stipulation or concessions by the parties.

Equally irrelevant is the fact, cited by General Host, that the government sought postponement of the briefing schedule in this Court for a time in order to consider the effect of the General Host-Greyhound agreement. The practical considerations that might have been relevant if General Host had been ready to transfer its stock before the case was presented to the Court have nothing to do with the question whether a transfer makes the case moot as a matter of law.

against Armour and other meat packers allows Armour to be taken over by a company engaged in food businesses that Armour is prohibited from entering directly or indirectly. Specifically, the United States appealed from an order of the district court denying its petition to make General Host a party to the decree and to prohibit General Host from owning a controlling interest in Armour while engaging in the forbidden food businesses. The United States sought a judgment remanding the case to the district court with instructions to make General Host a party and to order an appropriate remedy; unless General Host were to give up its forbidden food interests, the remedy would presumably be divestiture of the Armour stock, under the district court's supervision, to someone not in a forbidden food business.

Before the case was briefed in this Court, General Host entered into an agreement with Greyhound, which already owned a substantial minority interest in Armour, under which General Host would sell its Armour stock to Greyhound subject to a number of contingencies. The brief for the United States mentioned this agreement and also pointed out that Greyhound, like General Host, is engaged in food businesses prohibited to Armour under the decree. (Brief p. 10 and note 7) The matter was also discussed at the oral argument, at which time appellee's counsel advised the Court that in General Host's view the only remaining contingency to the consummation of the agreement was the obtaining by Greyhound (a regulated motor carrier) of Interstate Commerce Commission authority to issue stock in partial payment of the purchase price; counsel declined, however, to predict when such authority could be obtained. Counsel for the United States expressed the government's view that Greyhound's control of Armour would be just as inconsistent with the decree as General Host's control. (See transcript of oral argument, pp. 17-19.) Indeed, on November 24, 1969, the Department had formally advised Greyhound and General Host of this view and issued a press release to the same effect.[2]

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[2] It is undisputed that, through subsidiaries, Greyhound deals in many of the food products forbidden to Armour. It is engaged

On February 4, 1970, Greyhound applied to the Interstate Commerce Commission for authority to issue stock to General Host. When the Department of Justice learned of this filing in early March, it called the Commission's attention to the pendency of the appeal in this case (which would likely determine the legality of Greyhound's proposed action), stated that the government would challenge the Greyhound acquisition under the meat packers decree if it were to occur, and urged the Commission to defer ruling upon the application pending this Court's decision. Greyhound had previously advised a Department of Justice attorney that it would proceed to consummate the acquisition upon receipt of ICC authority. The Commission declined to stay its hand, and on the afternoon of Thursday, May 14, 1970, it entered an order authorizing the stock issuance to take place immediately; the order itself was not issued until Friday, May 15, but a press release was issued by the Commission on the afternoon of May 14. The Department learned of the order through a telephone call from a Greyhound representative to a Department attorney late on the afternoon of May 14; the representative advised that Greyhound would seek to consummate the transaction as soon as possible.

The stock transfer was consummated shortly before 8:00 p.m. that same evening, at a time when the United States was about to apply to Mr. Justice Marshall, at his home, for a temporary injunction against such consummation. The government had earlier informed General Host's counsel of its intention to seek such relief and had requested that the transaction be deferred for 24 hours to permit the filing and determination of the application; General Host's counsel forwarded such request to the parties in Chicago, where the closing took place, but they refused the postponement.

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in industrial catering and operates restaurants, cafeterias and other eating facilities in commercial plants, bus stations and elsewhere.

A. The Case Is Not Moot

1. *The controversy between the United States and General Host has not been exhausted by the termination of General Host's stock ownership in Armour.*

As noted above, the basic relief sought by the United States in this proceeding under the continuing meat packers decree has been an order requiring General Host to divest itself of its Armour stock. It is true that General Host has now ceased to own the stock. But that simple fact has not provided the result that the government has sought in this proceeding, since the transferee of the stock is equally objectionable under the theory of this case. And we do not believe that this Court, or the district court, has been rendered powerless to remedy this precipitous transfer of the stock—assuming, as we must throughout this memorandum, that the government will or may prevail, either here or on remand, in its position that a food company's ownership of a meat packer violates the decree.

As we have shown in our brief in this case (pp. 31-32), the remedial aspects of antitrust cases, especially those involving structural relief, are of crucial importance. This Court has recognized explicitly that an antitrust proceeding is "a futile exercise if the government proves a violation but fails to secure a remedy adequate to redress it" (*United States* v. *duPont & Co.*, 366 U.S. 316, 323). Thus, a proceeding attacking a combination of two companies is a meaningless gesture if the result of a determination that the combination violates the antitrust laws (or a structural decree thereunder) is simply the substitution of a new combination that is also a violation. For this reason, the relief sought and obtained in such cases ordinarily includes not only divestiture by the defendant but also court approval of the transferee and supervision of the transfer. *E.g.*, *United States* v. *Anheuser-Busch*, 1960 Trade Cas. ¶ 69,599. We are unaware of any challenge to the proposition that a court's powers in an equitable antitrust action permit

(and indeed require) it to disapprove any proposed divestiture that would itself create an anticompetitive situation.[3]

In this case, the government has sought not only General Host's divestiture of Armour, but further a divestiture that would itself result in a situation consistent with the meat packers decree. We contend that if General Host cannot own Armour, Greyhound also cannot, unless it first disposes of certain of its other food interests; Greyhound and General Host have for some time been on formal notice that the government takes this position. Thus, if we prevail here against General Host, we would argue to the district court on remand that it should prohibit any transfer of Armour to any company such as Greyhound. But General Host has now deliberately sought to prevent the government from obtaining, and indeed has sought to oust this Court and the district court of the power to grant a complete remedy. Thus, far from creating the situation that would have resulted from a government victory, General Host's action has been calculated to make it impossible for that situation ever to occur.

We do not think that this Court or the district court, as courts of equity and in the light of the All Writs Act, 28 U.S.C. 1651(a), are impotent to fashion a remedy for such an attempt to oust them of jurisdiction to decide the whole controversy before them. We see no reason why the transfer could not be ordered rescinded in such a way as to restore the status quo for purposes of the litigation; alternatively, as we shall suggest in the following section, the courts could fashion a remedy against Greyhound in this case that would effectuate the requirement that Armour's ownership be consistent with the outstanding decree. In either event, it cannot

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[3] To be sure, the government's petition in the district court, which the appellee quotes in part in its motion, did not explicitly ask the court to approve the transferee. But the petition did include a general prayer for "such other and further relief as the nature of this case may require and the Court may deem proper in the premises" (A. 49), and such a prayer plainly encompasses such court supervision of divestiture.

seriously be argued that General Host's controversy with the United States is moot under the stringent test applicable in such cases as this. *United States* v. *Concentrated Phosphate Export Association*, 393 U.S. 199, 203. Rather, the controversy has been aggravated.[4]

2. *In any event, there remains an active controversy between the United States and Greyhound, which can and should be made a party to the litigation.*

As we have stated, the Department of Justice has determined that appropriate steps should now be taken to require Greyhound to divest itself of its Armour stock. If that result could not be accomplished in the present proceeding, the government would promptly initiate a new proceeding in the district court, substantially identical to that initiated against General Host in 1969. The basic issue in such a new proceeding, supplemental, like the present one, to the continuing proceeding in which the district court supervises the underlying decree, would be the precise issue that is awaiting decision in this Court; whether the decree precludes Armour's acquisition by a company engaged in a line of business prohibited to Armour. And, if the district court again rejected the government's position, the matter would likely return to this Court next Term. But we do not believe that such circuitous further proceedings should be necessary to resolve this issue which continues to be vital in the ongoing decree proceeding. Rather, we believe that it would be appropriate to make Greyhound a party to the present proceeding so that this issue can be promptly resolved as to Greyhound as well as General Host.

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[4] Moreover, even though General Host has now disposed of its stock interest in Armour in the manner described above, it would be appropriate for the district court on remand to consider whether relief other than a proper divestiture order is now required against General Host itself. Particularly in light of General Host's recent conduct, the district court might decide to enjoin it from entering into any other intercorporate relationship forbidden by the decree. The propriety of and need for such relief are thus additional matters that remain in controversy between General Host and the United States.

In this connection, we note that Rule 25(c) of the Federal Rules of Civil Procedure provides that

> In case of any transfer of interest, the action may be continued by or against the original party, unless the court on motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

Initially, this provision answers any argument by General Host that its disposal of the Armour stock creates a procedural obstacle to the continuation of the litigation against it. More to the present point, the Rule makes it clear that the district court, on remand from this Court, could appropriately join Greyhound as a party so as to fashion a complete remedy for the situation that has now occurred. Such action would, moreover, be consistent with the court's power under Section 5 of the Sherman Act, 15 U.S.C. 5, to bring additional parties before it in an antitrust action when the ends of justice so require (see Brief for the United States, p. 19). Certainly when the propriety of the ownership and disposition of stock is in litigation such as this, the knowing transferee of such stock is a proper party to the litigation whose presence is required by the ends of justice.[5]

By the application of similar principles inherent in this Court's jurisdiction,[6] this Court could make Greyhound a full party to the present appeal. However—apart from the matter of interim relief, which we discuss in the next section—we see no present reason to do so, since the case has been fully briefed and argued here and presumably is approaching decision. Since the case is not moot in any event, it would seem most appropriate to proceed to decide it as it has been presented here; if

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[5] In any event, Greyhound would be governed by any decree issued against General Host under F.R. Civ. P. 65(d). Its purchase of the Armour stock has amounted to "active concert or participation" with General Host, and Greyhound has had full notice of all pertinent aspects of the present proceeding.

[6] E.g., 28 U.S.C. 1651(a); compare F.R. App. P. 43(b), which contemplates that the courts of appeals have a general power to substitute parties.

the United States prevails, the case could then be remanded to the district court for further proceedings in light of this Court's opinion and the changed circumstances. In the interest of judicial economy, this Court might consider it appropriate to instruct the district court to join Greyhound as a party on remand so that the remaining issues can be expeditiously resolved.[7]

We recognize, of course, that Greyhound is entitled to a hearing as to any matters pertinent to the fashioning of a remedy. In any event, no hypertechnical concept of mootness—even if General Host's "divestiture" were deemed to remove it as an adverse party—should be allowed to prevent resolution of the issues that remain in this continuing controversy, and the fashioning of appropriate relief in the district court. See *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U.S. 498, 515-516.

B. This Court Should Enjoin Greyhound From Increasing Or Exercising Its Stock Control Over Armour Pendente Lite.

General Host's motion states that its nominees on the Armour board of directors have submitted their resignations, presumably in favor of persons to be nominated by Greyhound. In addition, Greyhound has announced that it will seek to purchase the remaining outstanding shares of Armour stock within a year, apparently looking toward 100 per cent ownership of Armour by Greyhound. *Wall Street Journal*, May 15, 1970, p. 8, Col. 2. There are, no doubt, other steps that Greyhound will be taking to consolidate, enhance and utilize its control of Armour in the future. Especially in the light of the circumstances relating to Greyhound's acquisition of control, it would be appropriate for this Court to preserve the status quo—insofar as now possible—by en-

[7] Even if the Court were to disagree with us on the merits, it is desirable for it to decide the case at this time, in order to avoid the further judicial proceedings with respect to the legality under the decree of Greyhound's ownership of the Armour stock (see page 6, *supra*) that would otherwise result.

joining such further steps until the government has the opportunity to litigate the legality of the steps that have already been taken. For the reasons stated in the preceding section, there is no doubt of this Court's power to enter such an order.

CONCLUSION

For the reasons stated herein and in our brief and oral argument, the Court should proceed to decide the case as submitted to it and should enjoin Greyhound from increasing or utilizing its control of Armour pending the determination of the legality of such control. The order of the district court should be reversed and the case remanded with instructions to make both General Host and Greyhound parties, to consider the legality of Greyhound's control of Armour in light of this Court's decision, and to provide appropriate relief against such control.

Respectfully submitted.

ERWIN N. GRISWOLD
Solicitor General

MAY 20, 1970.

[Caption Omitted in Printing]

GREYHOUND'S ANSWER TO APPELLANT'S APPLICATION

MAY IT PLEASE THE COURT:

This Court is now requested to take original jurisdiction over The Greyhound Corporation so that it can be made a party to an ancient, ambiguous and intricate equity decree entered in the District of Columbia—by agreement—on February 27, 1920. The Decree speaks to practices which are now historic anachronisms—the use by the meat packers of "public stockyards," "stockyard terminal railroads," "market newspapers," "packing houses," and a distribution system based on "branch house route cars and auto trucks." (Appendix, pp. 29-30). The only vitality of the Decree in terms of post-1940 food distribution is the use of "retail meat markets." (Appendix, p. 36).

The Greyhound Corporation is primarily a transportation company, with not one retail market, stockyard packing house, branch house, route car or auto truck. Greyhound does not manufacture nor sell through retail markets any products referred to in the Decree and is not a "successor" to the position of General Host in that regard. The application of the 1920 Packers Decree to Greyhound is arrived at by a strained and belated analysis of the agreement which the parties, including appellant, have consistently interpreted to permit a relationship now attacked.

I. *The nature of the relationship on which appellant keys its appeal has been approved and solicited by Government, which cannot now disavow such repeated interpretations of an agreement to which it is bound.*

The facts are these:

1. The argument that any controlling investment in a packer places the packer in a "relationship" prohibited by the Decree if the investor deals in Decree products

was abandoned many years ago when both Armour and Government interpreted the Decree so as to permit Armour & Company and the Union Stock Yard & Transit Company to be controlled by the same entity. This matter was articulately stated in the General Host brief (p. 18 et seq.).

2. This "interpretation," otherwise controlling, is now circumvented by a further sophistication and refinement of the Decree: since Armour and the Stock Yards were controlled by an *individual*—Mr. Prince—the provisions of the Decree were not violated until it is shown that the individual owned more than 50% of the common stock of both companies (Appellant's brief, p. 28).

3. The Government has thus advised this Court that General Host, a corporation, is not graced with such immunity and has violated the Decree by acquiring common stock control of a packer *if that acquiring corporation has any products which are prohibited by the Decree.* Appellant's position was succinctly stated as follows:

> "The Decree was thus intended to estop an absolute separation between Armour and any *firm* engaged in the forbidden lines. There could be no intercorporate proprietary relationship of any kind." (Appellant's brief, p. 27).

By such reasoning, General Host and now Greyhound, as corporations, cannot acquire control of a packer since any sale or use of "Decree" products by such a corporation places the packer in a "relationship" violating the Decree.

4. As this highly technical interpretation of the 1920 Packers Decree was being urged on this Court to impose first on General Host and now on The Greyhound Corporation responsibilities far beyond the intent of the document, the Department of Justice was concurrently urging a different interpretation in Federal Court in Pittsburgh involving another packer, Wilson & Co. (Exhibit A, Exhibit B, pp. 10-12). The Greyhound Corporation submits that the interpretation placed on the Decree in that litigation *on a corporation—not an individual*—is control-

ling. Wilson & Co., Inc. by that agreement and proposed settlement will be placed in technical violation of the Packers Decree by a "relationship" with Jones & Laughlin Steel Company. The duplicitous, unfair and inconsistent position is dramatically set forth in that "related" proceeding in which the long-standing Decree "interpretation" argued to this Court by General Host is accepted by the Government. LTV, the principal defendant in Pittsburgh, owns 81.3% of the common stock of Wilson & Co., another major packer, which agreed to the February 1920 Decree. As a result of the Pittsburgh proceedings, appellant has agreed that Wilson & Co. can be part of a system which also includes Jones & Laughlin, a major steel company also owned by LTV.

The 1920 Decree is not limited to food products. Its unique provisions foreclose Armour and Wilson from manufacturing or distributing such obscure products as "bumper posts," "Babbitt," and "fruit pitting equipment" (Appendix, p. 33). The Decree in unmistakably clear language precludes each packer from manufacturing or distributing "bar-iron" and "structural steel" (Appendix, p. 33), products handled in enormous quantities by Jones & Laughlin. The Government therefore agrees—publicly—and solicits a federal court to accept a "relationship" in which a packer—Wilson & Co.—is commonly owned by interests dealing in prohibited products. It is manifestly implicit in that "settlement" that the public interest is not affected by such a "relationship" and the Decree has not been violated.

5. The Greyhound Corporation has an identical corporate structure to LTV and the similarity between the two cases is striking (Exhibit C). First, LTV controls many companies which are operated as subsidiaries. Greyhound Corporation operates on exactly the same basis. Second, each system (LTV or Greyhound Corporation) has approximately 80% of the common stock of a major packer (Wilson & Co. and Armour). Third, each system has an interest in a company that at least "uses" products included in the Packers Decree (Jones & Laughlin—Greyhound Prophet Restaurants). Finally, both holding companies have substantial business in non-

Decree products and do not use retail markets. Appellant's reasoning in the LTV case permits the packer to maintain a "relationship" with a division manufacturing and selling competitive products.

A reasonable certainty about the scope of antitrust prohibitions is imperative for just enforcement of the antitrust laws. No one purposefully breaks the law, if he knows what it is. Recognizing that fact, the Department of Justice has resorted with increasing frequency to publicizing its interpretation of the antitrust laws in the form of guidelines upon which the public may rely.

Although such procedures are not followed where the Government enforces antitrust decrees, the same public awareness and reliance results. When the Government acts or declines to take action to enforce a decree in a particular situation, it has declared its interpretation and construction of that decree to the public. When LTV, Inc. obained a controlling interest in Wilson & Co., the Government remained silent. No claim was asserted or even intimated that the acquisition was subject to the Packers Decree. To the informed public, the Government's acquiescence was tantamount to a public proclamation that the Packers Decree does not operate in reverse to preclude the acquisition of a controlling interest in a company subject to its prohibitions. Moreover, the Government must have anticipated that others would rely upon its "declared" position.

The Government now seeks to repudiate its prior interpretation of the Packers Decree and subject Greyhound to its reach. That cannot be done; it is unjust and virtually amounts to entrapment. The interpretation which the Government has given to a consent decree cannot lightly be abandoned. In *United States* v. *Atlantic Refining Co.*, 360 U.S. 19 (1959), the Government attempted to renounce its previous position, claiming for the first time that "the decree imposed limits it had not previously sought to enforce." (360 U.S. at 23) The court rejected the new construction urged by the Government, ruling that it "cannot be reconciled with the consistent reading given to the decree" by the parties, 360 U.S. at 22. Clearly, the interpretation which

the parties have given to a consent decree by their actions is a strong indication of its meaning. See *Donohue* v. *Vosper*, 243 U.S. 59 (1917).

The importance of the parties' interpretation of a consent decree is based to some extent upon its unique nature as a judicially sanctioned and approved agreement which in the first instance has been reached by the parties. *Hart Schaffner & Marx* v. *Alexander's Dept. Stores, Inc.*, 341 F. 2d 101 (2nd Cir. 1965); *Butler* v. *Denton*, 57 F. Supp. 656 (E.D. Okla. 1944); aff'd 150 F. 2d 687 (10th Cir. 1945); *United States* v. *Hartford-Empire Co.*, 1 F.R.D. 424 (N.D. Ohio 1940). Being akin to a contract, the operation and effect of a consent judgment is determined by rules of construction applicable to contracts. (49 C.J.S., *Judgments*, § 178) The practical interpretation placed upon an agreement by the parties is given great weight in construing its meaning. (3 Corbin, *Contracts*, § 558) Similarly, the interpretations of a consent decree as evidenced by the actions of the parties is the clearest and best indication of the scope and effect of the decree.

Judicial reluctance to permit unilateral abrogation of consent decrees finds a close analogy in statutory construction. The interpretation of a statute by a governmental body charged with its enforcement is entitled to great weight and will be followed unless clearly erroneous, e.g. *FTC* v. *Texaco, Inc.*, 393 U.S. 223 (1968); *FTC* v. *Borden Co.*, 383 U.S. 637 (1966); *United States* v. *Zucca*, 351 U.S. 91 (1956); *United States* v. *Chicago North Shore & M. R.R.*, 228 U.S. 1 (1933). Thus, an abrupt repudiation of established statutory construction by the governmental body will be disregarded. *United States* v. *Leslie Salt Co.*, 350 U.S. 383 (1956). *Cf.*, *New York, C. & St. L. R.R.* v. *Frank*, 314 U.S. 360 (1941). In the *Leslie Salt* case, the court expressed the prevalent opinion when it stated, 350 U.S. at 396:

> "Against the Treasury's prior long standing and consistent administrative interpretation its more recent *ad hoc* contention as to how the statute should be construed cannot stand."

In short, appellant has unfairly represented its position and seeks to revise and extend this unique and aged Decree to companies such as Greyhound and abrogate the interpretation placed on the document by the parties thereto. The historical anachronisms of this Decree include prohibitions on the manufacture and sale of "bumper posts," "wire fences," "Babbitt," "builders' hardware" and "soda fountains" (Appendix, p. 33). If the Government's current position is to be taken seriously, a comprehensive analysis of Jones & Laughlin's steel, iron and miscellaneous production must be made to determine whether even a scintilla of such merchandise somehow relevant to 1920 meat packing distribution precludes the "relationship" between Wilson & Co. and Jones & Laughlin. No such analysis or application has been made public for others to rely on. Rather, the total absence of any such analysis demonstrates conclusively that appellant, too, agrees with the historical anomolies of this document as appropriate to current corporate activity and thereby places an interpretation on the Decree by a party who agreed to it which fairness and equity requires should be controlling as to this issue as the analogy between Greyhound's investment and that of LTV is unmistakably clear.

II. *Greyhound is not a successor to the position of General Host and the "use" by Greyhound of food products is not inconsistent with the Decree.*

In order to make any rational analysis of appellant's position in the General Host case compared to that represented to the public in the Pittsburgh Federal Court in LTV, it is necessary to assume that some controlling investments in a major packer do not place the packer in violation of the Decree even though other corporations in the system deal in prohibited products. Presumably, General Host, which is predominantly a food company and with many retail food stores, is specifically precluded from owning Armour & Co. stock as a controlling interest because of the express prohibition in the Decree concerning "retail meat markets." While the position of appellant is not wholly consistent with this argument,

it at least admits of such rationalization in light of appellant's interpretation of the Decree in other litigation. A primary food company with basic retail meat distribution conceivably should not have a corporate "alliance" with a packer but another company with a far less significant position in Decree products might with impunity own a packer and not thereby place the packer in a "relationship" contrary to the Decree. Such logic at least makes appellant's otherwise conflicting positions on LTV and General Host consistent.

Greyhound does not accept footnote (2), page 3 of the Memorandum in Opposition to Motion to Dismiss (and similar assertions) that:

> "It is undisputed that, through subsidiaries, Greyhound deals in many of the food products forbidden to Armour."

Greyhound "*deals*" in food products only in the limited sense that, through subsidiaries, it *buys* food for preparation of meals served by its catering service or restaurants operated in conjunction with its bus business. It *sells* food only in prepared means as a restauranteur. It does not read the Packers Decree as barring Armour from the restaurant business. There is a vast difference between Greyhound's restaurant operations and the operation of General Host as a proprietor of a chain of grocery stores.

In sum, Greyhound suggests that an affirmance of the District Court would, *a fortiori*, dispose of the theories the Justice Department now tenders against Greyhound; conversely, an overruling of the District Court would not necessarily determine that Greyhound's control of Armour was illegal although it might shed some light on that subject.

III. *Other Equities.*

The Greyhound Corporation repeatedly advised the Department of Justice that on approval of the ICC the agreement would be consummated. At the time that Greyhound paid the 70 odd million dollars set forth as consideration in the General Host contract, the position

of the Department of Justice concerning the "relationship" of Wilson & Co. to Jones & Laughlin was a common public fact. (Exhibit B) While it is true that the Department of Justice had indicated to The Greyhound Corporation through its attorneys in 1969 that the Decree would be technically violated if The Greyhound Corporation had controlling interest in Armour, the validity of that position was eroded by the public announcement of the Wilson settlement. In short, on May 14, 1970 it was inconceivable that the appellant on almost identical facts would take a wholly different and conflicting position. Rather, the unique and striking similarity between LTV's investment in a packer and another company manufacturing Decree products appeared controlling and indicated an open interpretation of the Packers Decree which did not automatically establish the technical violation referred to earlier. From March of 1969 through May 14, 1970, appellant had every opportunity to bring Greyhound Corporation into this case and every opportunity to enjoin General Host from consummating the sale which the Justice Department was well aware of. In fact, the statements made by the Justice Department to the Interstate Commerce Commission indicate a consistent surveillance of The Greyhound Corporation's activities with respect to the contract. It is unfair and grossly inequitable for appellant to now contend that some form of injunction or rescission be applied to The Greyhound Corporation at a time when the Court's disposition of appellant's appeal is imminent and after a purported attempt to bring The Greyhound Corporation before the Supreme Court as an original party in order to immediately thereafter obtain some permanent and inequitable injunction. The Greyhound Corporation respectfully submits that the equities of this case are not with appellant.

The suggestion to the Supreme Court that a restraining order or injunction be entered against Greyhound and that incidentally thereto the Court take jurisdiction over Greyhound is in our view unprecedented. To begin with, in November and again in February, the Justice Department was formally advised that The Greyhound

Corporation would in fact close the transaction immediately on notice from the ICC. This matter was discussed fully with the Department of Justice and they were well aware of Greyhound's position in that regard; knowing that position the Justice Department then sought to have the ICC decision stayed, pending the decision of the Supreme Court. Throughout these many months the Justice Department has never sought to have Greyhound added to this case and at no time since docketing the appeal has there been any suggestion to the Supreme Court that General Host be restrained from "closing" the transaction. On the eve of this Court's decision, the Government contends that some immediate harm will occur—unspecified—requiring an injunction to issue. Such purported urgency is one of the Government's own doing.

To seek a restraining order on a non-party by asking the Supreme Court to take original jurisdiction of the non-party is likewise unprecedented. We know of no authority to support that proposition. This supposed urgency threatening some vague damage to a packer as a result of a stock exchange between Host and Greyhound must also be considered in the light of the Wilson & Co. analogy in which the Government solicits a court to approve an identical arrangement. The logic of that court recommendation in which LTV is permitted to own both a major steel company and a packer casts considerable doubt on the notion that irreparable harm will befall anyone who has a "relationship" with both Decree products and a packer.

With all due respect to the Solicitor General, the specific statement that General Host has sought to "oust this court and the District Court of the power to grant a complete remedy" is without any foundation. A temporary injunction is unnecessary.

IV. *The case should be disposed of.*

Passing each of the above arguments, The Greyhound Corporation must necessarily agree with the Solicitor General in his candid statement that "we do not believe

that . . . circuitous further proceedings should be necessary to resolve this issue (page 6 of the Memorandum in Opposition to Motion to Dismiss for Mootness). Greyhound Corporation agrees with the principle that this Court should decide the appeal of appellant. The logic of the argument that the Court will soon be troubled with a related issue at another term is compelling and The Greyhound Corporation therefore respectfully prays:

First, that this Court reach a decision on appellant's appeal, and

Second, that the findings and conclusions of the District Court be affirmed.

THE GREYHOUND CORPORATION

By /s/ Edward L. Foote
EDWARD L. FOOTE

One First National Plaza
Suite 5000
Chicago, Illinois 60670
786-5600

/s/ Robert J. Bernard
ROBERT J. BERNARD

10 South Riverside Plaza
Chicago, Illinois 60606
346-7560

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 69-438

[Filed]

UNITED STATES OF AMERICA, PLAINTIFF

v.

LING-TEMCO-VOUGHT, INC., JONES & LAUGHLIN STEEL CORPORATION, and JONES & LAUGHLIN INDUSTRIES, INC., DEFENDANTS

STIPULATION

It is stipulated by and between the undersigned parties by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached and filed herewith may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without any further notice to any party or other proceeding, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as hereinafter provided;

2. The plaintiff may withdraw its consent hereto at any time within the said period of thirty (30) days by serving notice thereof upon the other parties hereto and filing said notice with the Court;

3. In the event plaintiff withdraws its consent hereto, neither this proceeding nor the making of this Stipulation nor the filing of the attached proposed Final Judgment shall in any manner prejudice any consenting party in any subsequent proceedings.

Dated: March 10, 1970

For the Plaintiff:

/s/ RICHARD W. MCLAREN
RICHARD W. MCLAREN
Assistant Attorney General

/s/ ROBERT B. HUMMEL
ROBERT B. HUMMEL

/s/ WM. D. KILGORE, JR.
WM. D. KILGORE, JR.

/s/ LEWIS BERNSTEIN
LEWIS BERNSTEIN

/s/ Richard L. Thornburgh
United States Attorney

/s/ PAUL A. OWENS
PAUL A. OWENS

/s/ HAROLD J. BRESSLER

/s/ RAYMOND M. CARLSON
RAYMOND M. CARLSON

/s/ RODNEY O. THORSON
RODNEY O. THORSON

/s/ JERRY Z. PRUZAN
JERRY Z. PRUZAN
Attorneys Department of Justice

For Defendant Ling-Temco-Vought, Inc.:

ARNOLD & PORTER
By NORMAN DIAMOND

/s/ Harold R. Schmidt
Rose, Schmidt and Dixon

/s/ DAN BURNEY
Vice President and General Counsel

For Defendant Jones & Laughlin Industries, Inc.:

ARNOLD & PORTER
By NORMAN DIAMOND

/s/ Harold R. Schmidt
Rose, Schmidt and Dixon

/s/ DAN BURNEY
Vice President

For Defendant Jones & Laughlin Steel Corporation:

JONES, DAY, COCKLEY & REAVIS
By ALLEN C. HOLMES

/s/ Edmund K. Trent
Reed, Smith, Shaw & McClay

/s/ ROBERT B. PEABODY
Vice President and General Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 69-438

[Entered:]

UNITED STATES OF AMERICA, PLAINTIFF

v.

LING-TEMCO-VOUGHT, INC., JONES & LAUGHLIN STEEL CORPORATION, and JONES & LAUGHLIN INDUSTRIES, INC., DEFENDANTS

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 14, 1969, and the defendants having filed their answers thereto, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of the parties aforementioned, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction over the subject matter hereof and of the parties consenting hereto. The complaint states claims upon which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. 18), commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;

(B) "Subsidiary" shall mean a company which a person controls or has power to control, or in which fifty percent (50%) or more of the voting securities is owned or controlled by that person, directly or indirectly;

(C) "LTV" shall mean defendant Ling-Temco-Vought, Inc., and any of its subsidiaries other than J&L and its subsidiaries;

(D) "J&L" shall mean defendant Jones & Laughlin Steel Corporation, and any of its subsidiaries;

(E) "Braniff" shall mean Braniff Airways, Incorporated, and any of its subsidiaries;

(F) "Okonite" shall mean The Okonite Company, and any of its subsidiaries;

(G) "Voting securities" shall mean any common or preferred stock possessing voting rights at the time in question, but shall not include preferred stock entitled to voting rights only upon a future failure to pay dividends or upon any other contingency not then realized;

(H) "Capital expenditures" shall mean disbursements or obligations to make expenditures that add to a defendant's fixed assets, or affect the capacity, efficiency, life span, or economy of operation of a defendant's existing fixed assets.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of a defendant.

IV

(A) LTV is ordered and directed to divest, by three (3) years from the date of entry of this Final Judgment, all of its interest, direct and indirect, in Braniff and Okonite, or, in the alternative, all of its interest, direct and indirect, in J&L.

(B) Subject to the limitations set forth in this Section IV, the divestiture directed above may be carried out by any method; provided, however, that if LTV receives in connection with any such divestiture any securities from a person to whom divestiture is made, such securities (other than securities issued by LTV) (1) shall not be voted, if of a voting class, and (2) shall be disposed of no later than two hundred twenty (220) days after receiving such securities, unless plaintiff consents to a longer period, and provided further that if the divestiture is carried out by way of disposition of assets, such divestiture shall be made in the form of one or more going and viable businesses, each such business to be capable of engaging in substantially the same operations as those previously conducted by such business.

(C) The complete details of any contemplated plan of divestiture intended to implement the provisions of subsection (A) of this Section IV (including the identity of any person, or persons, or class of persons to whom the divested property is to be transferred, and all outstanding contracts involving the properties to be divested to which Ling-Temco-Vought, Inc., or any of its remaining subsidiaries, is a party) shall be submitted to the plaintiff by LTV. Following the receipt of any such plan, plaintiff shall have thirty (30) days in which to object thereto by written notice to LTV. If plaintiff does not so object to the proposed plan, the plan may be consummated, but if objection is so made, the proposed divestiture shall not be consummated until LTV obtains judicial approval of the plan or until the plaintiff withdraws its objection; provided, however, (1) that in the case of a plan which provides for a pro rata distribution to security holders of LTV, or an exchange with

security holders of LTV or any of its subsidiaries, or a public offering not involving a prior understanding or commitment to sell a portion of the securities to any predetermined purchaser (other than an underwriter or selling dealer for the purpose of resale to the general public), prior approval of the plaintiff need not be obtained and the plan may be consummated upon the termination of the thirty (30) day period, so long as the plan prohibits any person known by LTV to own or control beneficially more than one percent (1%) of the voting securities (including securities convertible into voting securities) of LTV from receiving any of the equity interest being divested until he has disposed of his voting securities (including securities convertible into voting securities) of LTV, and (2) that in the case of a plan as to which the plaintiff objects, the time period set forth in subsection (A) of this Section IV within which divestiture must be accomplished shall, unless the Court orders otherwise upon application of the plaintiff, be tolled during the pendency of any proceeding under this Final Judgment relating to the approval of a proposed plan of divestiture.

(D) If the divestiture requirements of subsection (A) of this Section IV have not been met within the time specified therein, LTV shall divest all of its interest in J&L, and for that purpose shall place in the control of a trustee, promptly after his appointment by this Court, upon application of the plaintiff, at the cost and expense of LTV, all of the shares of J&L stock and other securities of J&L owned or controlled by LTV, vesting in the trustee full authority to vote any such security interest and to dispose of such security interest subject to Court supervision after hearing the parties hereto on any issue presented;

(E) Until the divestiture required by this Final Judgment is accomplished, neither LTV nor J&L shall take any action which knowingly impairs the viability of any of the businesses to be divested or LTV's ability to accomplish such divestiture, and, specifically, shall not cause or permit any of the following as to any company

remaining to be divested, except upon consent of the plaintiff:

(1) The payment of any dividends by Braniff Airways, Incorporated, The Okonite Company, or Jones & Laughlin Steel Corporation except out of current earnings, but this restriction shall not prohibit the payment of dividends which are not in excess of the per share rate of the last dividend declaration prior to February 1, 1970;

(2) Other than transactions in the normal course of business, transactions pursuant to which LTV, Braniff, Okonite, or J&L shall become indebted to one another or acquire any equity interest in or assets from one another; provided that this clause shall not apply to (a) the intercorporate payments and obligations arising out of, or in connection with, the filing of consolidated income tax returns or the customary allocation of general and administrative expenses as between corporations, or (b) LTV's receipt from Braniff of stock dividends on Braniff's Special Stock, Class A, or (c) the acquisition of any equity interest in or asset of Braniff, Okonite, or J&L in connection with a divestiture the terms and conditions of which have not been objected to by plaintiff;

(3) Any recapitalization of Braniff, Okonite, or J&L, which is part of a transaction involving (a) any two or more of them, (b) any other person bound by this Final Judgment, (c) any other subsidiary of any other person so bound, or (d) Jones & Laughlin Steel Corporation and any of its subsidiaries;

(4) The encumbrance of any assets of Braniff, Okonite, or J&L to secure the indebtedness of (a) any other of them, (b) any other person bound by this Final Judgment, (c) any other subsidiary of any other person so bound, (d) any person LTV or J&L is now or is hereafter in the process of acquiring;

(5) Any disposition of any of the assets of Braniff, Okonite, or J&L other than transactions in

the ordinary course of business and except as otherwise permitted by the provisions of this Final Judgment;

(6) Any acquisition, corporate reorganization, merger, consolidation or combination in any form by either Braniff or Okonite or J&L; provided, however, that this clause (6) shall not preclude (a) the filing of any consolidated income tax return, or (b) any acquisition by J&L as to which the plaintiff has failed to object in writing to LTV and J&L within thirty (30) days after receiving written notice of the material terms of the proposed acquisition;

(7) Any conversion by LTV of LTV-owned stock in Braniff or Okonite into stock having different rights.

Nothing in clauses (E)(1) through (E)(7) of this Section IV shall prevent any of the following:

(a) Any transaction the purpose of which is to transfer or otherwise make available to LTV any consideration received in connection with any disposition of assets made pursuant to the divestiture provisions of this Final Judgment;

(b) Any transaction between Ling-Temco-Vought, Inc., and any of its subsidiaries other than Braniff, Okonite, or J&L;

(c) Any transaction (other than a recapitalization or corporate reorganization) solely between Jones & Laughlin Steel Corporation and any of its wholly-owned subsidiaries;

(d) Any transaction solely between Braniff Airways, Incorporated, and any of its wholly-owned subsidiaries;

(e) Any transaction solely between The Okonite Company and any of its wholly-owned subsidiaries; or

(f) With respect to clauses (2), (3), (5), (6) and (7) of this paragraph (E), the consummation of the proposed transactions for LTV (i) to acquire full ownership of Okonite, and (ii) to reorganize Okonite into separate, viable businesses consisting, respectively, of the wire and cable operations, and the carpet operations.

V

(A) LTV is enjoined and restrained, and J&L is enjoined and restrained, if not divested, for ten (10) years from the date of entry of this Final Judgment (1) from acquiring one percent (1%) or more of the voting securities in any company the assets of which are recorded on the books of such company (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars ($100,000,000), or from acquiring from any one person or group of persons under common control tangible or intangible assets or good will recorded on the books thereof (net of related valuation reserves recorded on such books) in an amount in excess of One Hundred Million Dollars ($100,000,000), without first obtaining the consent of the plaintiff, or approval of this Court upon LTV's or J&L's establishing, whichever is the acquiring company, by a preponderance of the evidence that the acquisition will not lessen competition or tend to create a monopoly in any line of commerce in any section of the country, and (2) from acquiring, except as contemplated by Section IV(B) of this Final Judgment or upon consent of the plaintiff, any substantial interest in any property to be divested pursuant to Section IV of this Final Judgment, or any interest in a person who acquires any property to be divested pursuant to Section IV of this Final Judgment so long as such person retains such property, and (3) from participating in any joint venture or business combination with any company divested pursuant to Section IV of this Final Judgment, unless plaintiff otherwise consents.

(B) The prohibition contained in subsection (A) of this Section V shall no longer be in effect (1) if and when LTV should divest itself of all of its interest in J&L, meaning J&L's business substantially as conducted on the date of entry of this Final Judgment, or (2) as to any subsidiary of LTV or J&L, if and when such subsidiary is disposed of to a person who is not a defendant or person who has submitted to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment.

VI

(A) Simultaneously with the consummation of the divestiture of a company pursuant to Section IV of this Final Judgment, LTV shall take such steps as may be necessary to remove from the position as director or officer of such company any person holding any similar position with or having previously been associated with LTV prior to LTV's acquisition of such company, unless plaintiff otherwise consents. Except as provided in this Section VI, nothing in this Final Judgment shall prevent officers and directors of LTV, or officers and directors of companies which it controls, or other nominees of LTV from serving as officers and directors of any of the companies specified in subsection (A) of Section IV of this Final Judgment.

(B) Prior to the divestiture of a company pursuant to Section IV of this Final Judgment, LTV shall grant to the company to be divested an option to terminate any contract between LTV and such company at any time within one (1) year after divestiture, but this subsection (B) shall not relieve any divested company of its obligation to pay LTV any consideration which is due at the time of the termination of any such contract.

VII

Each defendant and each person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment (each such person also being referred to in this Section VII as a "defendant") is enjoined and restrained from:

(A) Purchasing, or entering into or adhering to any contract, agreement or understanding to purchase, products, goods or services from any actual or potential supplier on the condition or understanding that purchases by such defendant from such supplier will be based on or conditioned upon such supplier's purchases from such defendant;

(B) Selling, or entering into or adhering to any contract, agreement or understanding to sell products, goods

or services to any actual or potential customer on the condition or understanding that such defendant's purchases of products, goods or services from such customer will be based on or conditioned upon such customer's or potential customer's purchases from such defendant;

(C) Communicating to such defendant's actual or potential suppliers or contractors that:

(1) In purchasing products, goods or services, defendant will give preference to any supplier or contractor based on or conditioned upon such supplier's or contractor's purchases from such defendant or the dollar value of contracts awarded by such supplier or contractor to such defendant;

(2) In compiling bidder lists or in awarding contracts for projects involving capital expenditures by such defendant, preference will be given to any contractor or supplier based on or conditioned upon such contractor's or supplier's purchases from such defendant or the dollar value of contracts awarded by such supplier or contractor to such defendant;

(3) Such defendant is entitled to receive contracts or orders for products or goods sold or services from such supplier or contractor based on or conditioned upon such defendant's purchases from such supplier or the dollar value of contracts awarded by defendant to such contractor;

(4) In awarding contracts for materials or services, such defendant has or will give preference to any contratcor or supplier based upon such supplier's purchases from such defendant or the dollar value of contracts awarded by such supplier or contractor to such defendant;

(D) Comparing or exchanging statistical data with any supplier or contractor to ascertain, facilitate or further any relationship between purchases by such defendant from such supplier or contractor and sales by such defendant to such supplier or contractor;

(E) Engaging in the practice of discussing with any supplier or contractor the relationship between purchases or contract awards by such defendant involving

such supplier or contractor, and sales by such defendant to such supplier or contractor;

(F) Preparing or maintaining statistical compilations for any supplier or contractor or any class or grouping of suppliers or contractors which compares purchases by such defendant from suppliers or the dollar value of contracts awarded by defendant to contractors with purchases by such suppliers from such defendant or the dollar value of contracts awarded to such defendant by such contractors;

(G) Issuing, to personnel having responsibilities for purchasing or responsibilities for awarding contracts, lists which identify customers and the magnitude of their purchases from such defendant or which identify companies and the dollar value of contracts they have awarded to such defendant or which specify or recommend that purchases be made from any such customers or that contracts be awarded to such companies;

(H) Referring compilations of bids received for contracts for projects involving capital expenditures by such defendant to any department or unit having sales responsibilities for decision or recommendation by such department or unit as to the identity of the firm or firms to whom contracts for such projects should be awarded.

VIII

Each defendant and each person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment (each such person also being referred to in this Section VIII as a "defendant") is ordered and directed to:

(A) Refrain from continuing or establishing any office or position whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing policies, arrangements, or practices;

(B) Withdraw from all personnel with sales responsibilities any lists or compilations which may be in existence described in subsections (F) and (H) of Section VII above, and withdraw from all personnel with pur-

chasing or contracting responsibilities any lists or compilations which may be in existence described in subsections (F) and (G) of Section VII above;

(C) Refrain from being a member of and prohibit its officers and employees from belonging to, or participating in the activities of, or contributing anything of value to any association whose activities, programs or objectives are in whole or in part to promote trade relations involving reciprocal purchasing policies, arrangements or practices;

(D) Issue within sixty (60) days to each of its officers and employees having sales, purchasing or contracting responsibilities a policy directive stating that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases by such defendant from such supplier or potential supplier will be based on or conditioned upon such supplier's purchases fom such defendant;

(2) All officers and employees are prohibited from selling, entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that such defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon such defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or supplier for any contract for a project involving capital expenditures by such defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, on the condition or understanding that such solicitations or such awards by such defendant will be based on or conditioned upon such contractor's or supplier's purchases from such defendant or the dollar value of contracts awarded by such contractor or supplier to such defendant;

(4) Violation of the policy directive may subject any offending officer or employee to dismissal from his employment and to liability for violation of this Final Judgment;

(E) Furnish to each supplier from whom such defendant has purchased, and to each customer to whom such defendant has sold, more than $100,000 of products, goods and services (or $50,000 in the case of a defendant that maintained and has available such data on a company-wide cumulative basis) during 1967 or 1968 (or during the most recent year for which such data is available in the case of a person who becomes bound by the provisions hereof pursuant to subsection (A) (2) of Section X of this Final Judgment), a statement accurately and completely describing the provisions contained in Sections VII and VIII of this Final Judgment, or a copy thereof, and advise each such supplier and customer, by written notice satisfactory to the Antitrust Division of the United States Department of Justice, that:

(1) All officers and employees are prohibited from purchasing or entering into any contract, agreement or understanding to purchase products, goods or services from any actual or potential supplier on the condition or understanding that such purchases by such defendant from such supplier or potential supplier will be based on or conditioned upon such supplier's purchases from such defendant;

(2) All officers and employees are prohibited from selling, or entering into any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that such defendant's purchases of products, goods or services from such actual or potential customer will be based on or conditioned upon such defendant's past or future sales to such customer;

(3) All officers and employees are prohibited from (i) soliciting bids from any contractor or sup-

plier for any contract for a project involving capital expenditures by such defendant, and (ii) awarding contracts for such projects to any such contractor or supplier, upon the condition or understanding that such solicitations or such awards by such defendant will be based on or conditioned upon such contractor's or supplier's purchases from such defendant or the dollar value of contracts awarded by such contractor or supplier to such defendant.

IX

Nothing in Sections VII or VIII of this Final Judgment:

(A) Shall prohibit any defendant or any person who submits to the jurisdiction of this Court for purposes of being bound by the provisions of this Final Judgment:

(1) From entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(2) From contracting for construction work or for the manufacture or installation of equipment and facilities for its own use and not for resale on the condition that its products, goods or services are to be used in the performance of such contracts; or

(3) From complying with any requirement or request of a state or federal agency concerning the preparation, maintenance, or distribution of any compilation or list.

(B) Shall apply to any transactions engaged in by a foreign subsidiary of a defendant or by a foreign subsidiary of any person who submits to the jurisdiction of this Court for purposes of being bound by the provisions of this Final Judgment, if any such foreign subsidiary is not controlled by such defendant or person.

X

(A) Each defendant is further ordered and directed (1) within sixty (60) days from the date of entry here-

of to cause each of its present domestic subsidiaries to file with this Court its submission to the jurisdiction of the Court and its consent to be bound by the provisions of this Final Judgment until the expiration of ten (10) years from the date of entry of this Final Judgment, and (2) within sixty (60) days from the date of acquiring or organizing any additional domestic subsidiary, to cause such domestic subsidiary to file its submission to the jurisdiction of the Court and its consent to be bound by the provisions of this Final Judgment until the expiration of ten (10) years from the date of entry of this Final Judgment.

(B) Compliance with subsection (A) of this Section X shall not be required with respect to any subsidiary the assets of which are recorded on its books (net of related valuation reserves recorded on such books) in an amount not in excess of Ten Million Dollars ($10,000,000), or by any presently-owned subsidiary which is a common carrier by rail subject to the jurisdiction of the Interstate Commerce Commission.

XI

The preliminary injunction entered herein on April 14, 1969, having provided that it should continue until "the final adjudication" of this action, and the Court having intended thereby to mean continuation only until the entry of a Final Judgment in this action, including a Final Judgment entered on consent, now therefore the said preliminary injunction is hereby dissolved, including the directive in paragraph 4 thereof requiring the placing of LTV-owned common stock of J&L in a voting trust.

XII

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, each defendant and each person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment (each such person also being referred to in this Section XII as a "defendant") shall permit duly authorized representatives of the De-

partment of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such defendant's principal office, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section XII of this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment, and any person who submits to the jurisdiction of this Court for the purpose of being bound by the provisions of this Final Judgment, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modifica-

tion, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

This Final Judgment shall remain in full force and effect for ten (10) years, and no longer, from the date of entry hereof except as to any provision herein for which a shorter term is specified therein.

_____

United States District Judge

Dated: _____, 1970

EXHIBIT B

PROSPECTUS

$50,000,000

JONES & LAUGHLIN STEEL CORPORATION

First Mortgage Bonds—Series F, 9⅞%, Due 1995

Dated April 1, 1970 ———— *Due April 1, 1995*

Annual sinking fund payments of $2,500,000 commencing in 1976 will retire 95% of the Bonds prior to maturity. The Corporation may increase the sinking fund payment in any year by an amount not exceeding the required sinking fund payment for that year. The Bonds are redeemable at prices set forth herein at the option of the Corporation, except that prior to April 1, 1980, no redemption may be made from or in anticipation of money borrowed at an interest cost to the Corporation of less than 10% per annum.

The Corporation intends to make application for the listing of the Bonds on the New York Stock Exchange.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public[1]	Underwriting Discounts and Commissions	Proceeds to Corporation[1] [2]
Per Bond	98.75%	1.50%	97.25%
Total	$49,375,000	$750,000	$48,625,000

[1] Plus accrued interest from April 1, 1970.

[2] Before deduction of expenses payable by the Corporation estimated at $150,000.

The Bonds are offered by the several Underwriters for delivery in temporary form at the office of First National City Bank, 111 Wall Street, New York, New York on or about April 23, 1970. Such Bonds are offered when, as and if issued by the Corporation and accepted by the Underwriters and subject to their right to reject orders in whole or in part. Bonds in definitive form which may be exchanged for Bonds in temporary form will be made available by the Corporation as soon as practicable. In addition, the Bonds are being offered to certain institutions by the Corporation through the several Underwriters for delivery on October 15, 1970 pursuant to Delayed Delivery Contracts with the Corporation. The aggregate principal amount of Bonds which may be sold pursuant to Delayed Delivery Contracts may not exceed $5,000,000. See "Delayed Delivery Arrangements" herein. The Bonds will be issued in fully registered form only.

THE FIRST BOSTON CORPORATION

LEHMAN BROTHERS

GOLDMAN, SACHS & CO.

The date of this Prospectus is April 9, 1970.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS HEREBY OFFERED AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Corporation is subject to the informational requirements of the Securities Exchange Act of 1934 and in accordance therewith files reports and other information with the Securities and Exchange Commission. Information as of particular dates concerning directors and officers, their remuneration, options granted to them, the principal holders of securities of the Corporation and any material interest of such persons in transactions with the Corporation is disclosed in proxy statements distributed to shareholders of the Corporation and filed with the Commission. Such reports, proxy statements and other information can be inspected at the principal office of the Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and copies of such material can be obtained from the Commission at prescribed rates. Reports, proxy material and other information concerning the Corporation can also be inspected at the offices of the New York Stock Exchange, 11 Wall Street, New York, N.Y. 10005.

THE CORPORATION

Jones & Laughlin Steel Corporation is a fully integrated steel company producing a diversified line of carbon, stainless and alloy steel products. The Corporation produced 7,764,000 net tons of raw steel during 1969 and was the sixth largest steel producer in the United States for the year. Steelmaking plants are lo-

cated at Pittsburgh and Aliquippa, Pennsylvania; Cleveland, Ohio; and Warren (Detroit), Michigan; and a major new steel finishing plant, completed in late 1967 and early 1968, is located at Hennepin, Illinois, near Chicago.

The Corporation's diversified line of carbon steel products, produced and finished primarily at the Pittsburgh, Aliquippa, Cleveland and Hennepin Works, includes hot and cold rolled sheets and strip, galvanized sheets, tubular products, hot rolled and cold finished bars, tin mill products, light plates and light structural shapes and wire products. In addition, primarily through the plants of its Stainless and Strip Division with general headquarters at Warren (Detroit), Michigan, the Corporation manufactures stainless and alloy steel products and "restricted specification" cold rolled strip in carbon, alloy and stainless grades. At other facilities the Corporation manufactures electricweld tubing, wire rope, steel drums and pails, rigid steel conduit, electrical metallic tubing and electrical underfloor distribution systems, produces and sells coal chemicals and participates in a joint venture which will result in the production of modular home units on a limited scale during 1970.

The Corporation maintains sales offices in the major cities of the United States. It also operates 10 steel service centers; operates or utilizes 60 stores and several warehouses and yards in 18 states which sell a broad line of oil and gas well supplies and equipment; and operates wire rope warehouses.

The Corporation was incorporated in Pennsylvania on December 19, 1922 as the successor to a business originally established in 1853. Its principal executive offices are located at 3 Gateway Center, Pittsburgh, Pennsylvania.

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JONES & LAUGHLIN STEEL CORPORATION
CONSOLIDATED STATEMENT OF INCOME

The following statement has been examined by Price Waterhouse & Co., independent accountants, whose opinion thereon appears elsewhere in this Prospectus. The statement should be read in conjunction with the consolidated financial statements and notes thereto included elsewhere in this Prospectus.

	Year ended December 31,				
	1965	1966	1967	1968[1]	1969
			(000 omitted)		
REVENUES:					
Net sales and other operating revenues	$992,731	$1,010,020	$903,650	$1,016,011	$1,056,064
Interest and other income	6,828	9,085	8,367	5,337	6,649
	999,559	1,019,105	912,017	1,021,348	1,062,713
COSTS AND EXPENSES:					
Cost of sales and operating expenses	776,908	773,141	739,553	847,336	890,771
Depreciation and depletion	72,611	63,934	66,532	57,588	59,172
Selling, administrative and general expenses	44,997	48,070	47,180	49,787	53,680
Interest and expense on long-term debt	5,942	9,855	10,751	12,510	14,871
Other interest	—	—	—	2,036	1,084
Taxes other than income and payroll taxes	15,294	16,941	19,106	20,578	21,969
	915,752	911,941	883,122	989,835	1,041,547
INCOME BEFORE TAXES ON INCOME	83,807	107,164	28,895	31,513	21,166
PROVISION FOR INCOME TAXES:					
State	2,223	3,032	500	715	1,312
Federal:					
Currently payable (refundable)	40,553	50,576	(1,974)	7,625	(4,428)
Investment tax credits[2]	(3,360)	(4,543)	(13,552)	(7,186)	(4,873)
Tax effect of timing differences	(8,879)	(6,982)	8,112	2,710	7,057
	30,537	42,083	(6,914)	3,864	(932)
NET INCOME	$ 53,270	$ 65,081	$ 35,809	$ 27,649	$ 22,098
NET INCOME APPLICABLE TO COMMON STOCK	$ 51,802	$ 63,613	$ 34,341	$ 26,181	$ 21,272
EARNINGS PER COMMON SHARE (Weighted Average)[3]	$ 3.28	$ 4.02	$ 2.17	$ 1.65[1]	$ 1.34
CASH DIVIDENDS PER SHARE:					
5% Preferred Stock	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00
Common Stock[3]	$ 1.275	$ 1.35	$ 1.35	$ 1.35	$ 1.35
RATIO OF EARNINGS TO FIXED CHARGES[4]	11.62	9.99	3.36	2.80	2.13

NOTES:

[1] See Note D to the consolidated financial statements for information regarding change in depreciation method beginning January 1, 1968. The results of operations for the year ended December 31, 1968 reflect such change with a resulting decrease in depreciation expense of $23,037,000 and increase in net income of $10,471,000 ($.66 per share).

[2] Except as to construction under certain contracts entered into prior to April 19, 1969, reductions in Federal income taxes payable resulting from investment tax credits will not be available in the future as a result of repeal of the investment tax credit. Investment tax credits increased net income per share of common stock for each of the last five calendar years as follows: 1965—$2.1; 1966—$2.9; 1967—$.86; 1968—$.45; and 1969—$.31.

[3] As adjusted for a 100% stock distribution paid in March 1969.

[4] Earnings consist of consolidated net income plus income taxes and fixed charges. Fixed charges include interest expense, amortization of debt discount and expense and one-third of rental expense.

On a pro forma basis, the ratio of earnings to fixed charges for the year ended December 31, 1969, would be 2.08 after reflecting annual interest at 9-7/8% on the Bonds offered hereby and reduction of interest at 8% on the bank borrowings to be repaid.

* * * *

August 1, 1968 with relatively no change in productivity have not fully offset increased employment costs and continuing increases in freight rates, the cost of borrowed money and the price level of purchased goods, services and raw materials.

The results for the first two months of 1970 were affected by a reduction of incoming orders, a continuation of the operating problems related to the blast furnace at the Cleveland Works and of the break-in and training costs related to the continuous billet casting machine at the Aliquippa Works, the continuing effect of the cost increases referred to in the preceding sentence and the inability of the Corporation at this time to utilize investment tax credits because of the loss from operations for the period. It is not possible to determine with any accuracy when the operating problems related to the blast furnace will be resolved but the problems should be of a temporary nature.

New Federal legislation concerning the health and safety of coal mine employees was enacted in 1969. The Corporation has also become subject, as have other steel producers, to more stringent air and water quality control legislation and regulations in several jurisdictions. The extent to which the above legislation and regulations might affect the Corporation's coal mining and steel producing operations, and consequently the earnings of the Corporation is not determinable at this time; however, the Corporation expects that its expenditures for mine safety and air and water quality control will increase. It is anticipated that approximately $6,000,000 will be spent for air and water quality control projects in 1970 compared with $5,000,000 in 1969.

During November 1969, a major competitor of the Corporation announced that commencing January 1, 1970 it would offer its customers an optional method of pricing sheet products known as "theoretical weight" pricing. Under this method, the customer is guaranteed at least minimum product dimensions and billing is based upon the weight calculated using the minimum dimen-

sions specified with no charge being made for excess weight due to any actual overages in dimensions. To meet this competition, the Corporation and other major steel producers are now offering the optional method of pricing on most types of hot rolled, cold rolled and galvanized sheets. It is expected that a substantial part of the cost to the Corporation resulting from the delivery of excess weight will be offset by an extra charge which became effective February 1, 1970 for use of the optional pricing method and by increased base prices on sheet products effective February 1, 1970.

The Corporation has announced a policy, similar to policies announced by its major competitors, that if its mill prices on carbon or alloy rolled steel products are increased, they will not be raised again for at least one year. The Corporation's policy went into effect after the increase in the base prices of sheet products referred to above and currently applies only to plates and structurals as to which increased prices have recently been announced.

The Corporation and its competitors are presently experiencing a refusal by certain truck driver-owners (referred to in some news reports as the Fraternal Association of Steel Haulers) to transport steel. It is not possible at this time to determine what effect, if any, this development may have upon the Corporation.

DESCRIPTION OF BUSINESS

Raw Steel Production

The following table lists the raw steel production of the Corporation and the steel industry during the five years 1965 through 1969 and such production as contrasted with average yearly production in net tons in the base period 1957-1959.

	Corporation (Net Tons)	Industry* (Net Tons)	Corporation 1957-1959=100	Industry* 1957-1959=100
1965	7,280,000	131,462,000	137.4	135.3
1966	7,726,000	134,101,000	145.9	138.1
1967	6,892,000	127,213,000	130.1	131.0
1968	7,688,000	131,462,000	144.7	135.0
1969	7,764,000	141,069,000	146.6	145.2

* The figures relating to the steel industry are as reported by the American Iron and Steel Institute. The 1969 Industry figures are preliminary.

During 1968 and 1969, approximately 51% and 58%, respectively, of the Corporation's raw steel was produced by the basic oxygen process. The industry figures were 37% and 43%, respectively, during 1968 and 1969.

Shipments and Distribution

During the five years 1965 through 1969, the tonnages of steel products shipped by the Corporation, including a minor amount of products produced by others, were: 1965, 5,304,000 net tons; 1966, 5,341,000 net tons; 1967, 4,689,000 net tons; 1968, 5,381,000 net tons; and 1969, 5,366,000 net tons.

The Corporation's product pattern during the five years 1965 through 1969 is reflected in the following table which shows the percentages by tonnage of shipments of mill products:

	1965	1966	1967	1968	1969
Hot rolled, cold rolled and coated sheets and strip	47%	46%	44%	47%	50%
Tubular products	13	13	14	13	12
Hot rolled and cold finished bars	13	14	13	12	12
Tin mill products	9	8	11	10	8
Light plates and structural shapes	10	10	9	8	8
Wire products	3	3	3	3	3
Miscellaneous	5	6	6	7	7
Total	100%	100%	100%	100%	100%

The percentage tonnage distribution of the Corporation's shipments of these mill products among various industries and outlets during the five years 1965 through 1969 is set forth below:

	1965	1966	1967	1968	1969
Automotive	30%	28%	27%	29%	28%
Jobbers and dealers	18	17	17	17	19
Containers	10	9	12	11	10
Machinery and equipment	8	9	9	9	9
Construction	8	8	7	7	8
Household appliances and office equipment	6	7	7	6	6
Oil and gas	5	5	5	5	4
All other domestic consumers	14	16	15	14	14
Export	1	1	1	2	2
Total	100%	100%	100%	100%	100%

Shipments of mill products from the Pittsburgh, Aliquippa and Cleveland Works, from the Hennepin Works and other steel finishing facilities and from the plants of the Stainless and Strip Division to other plants of the Corporation for further processing and to the steel service centers, stores, warehouses and yards operated or utilized by the Corporation are included in the tables.

On an average, during the five years 1965 through 1969 shipments to the Corporation's largest customer, General Motors Corporation, were approximately 11% of the Corporation's gross sales in dollars.

Competition

Competition among domestic producers and from imported steel, as well as competition from manufacturers of competitive products other than steel, has been intense. During 1968 and 1969, foreign steel imports totaled 17,960,000 and 13,700,000 net tons, respectively, or approximately 17% and 13% of apparent domestic consumption, respectively. The decrease in total import tonnage during 1969 resulted principally from the increased demand for steel products abroad and, in part,

from the voluntary export arrangements which were undertaken in 1968 by certain Japanese and European steel producers following conversations with the United States Department of State. There has, however, been no decline in specialty steel imports and imports continue to be high in certain higher priced product categories.

Property Additions

The Corporation's property additions (excluding investments in unconsolidated raw materials companies) during the five years 1965 through 1969, are set forth below.

	In Thousands of Dollars		
	Additions	Retirements and Adjustments*	Net Additions
1965	$ 85,417	$41,996	$ 43,421
1966	126,519	13,918	112,601
1967	184,601	10,577	174,024
1968	82,859	24,658	58,201
1969	83,630	19,270	64,360

* Includes amortization of blast furnace linings and cost depletion and patent amortization.

The provisions for depreciation and depletion and the investment tax credits for the five-year period amounted to $319,837,000 and $33,514,000, respectively.

Raw Materials

Iron Ore—The Corporation estimates that as of January 1, 1970 the total of the proven and probable reserves of merchantable ore of the Corporation and two wholly owned subsidiaries and the Corporation's share of reserves of merchantable ore of three other companies in which it has stock interests ranging from 25% to 32% was such that, when mined and beneficiated, there will be produced approximately 574,000,000 net tons of merchantable ore averaging approximately 64% iron con-

tent. Approximately 13% of the reserves are held in fee and 87% under long-term mining leases. The reserves are distributed as follows:

Location	Proven and Probable (Net Tons)
Lake Superior District	422,000,000
New York	71,000,000
Canada (principally Ontario)	81,000,000
Total	574,000,000

Approximately 422,000,000 net tons of the above reserves are undeveloped. Essentially all the undeveloped reserves are in the Lake Superior District and Canada, are taconite requiring beneficiation and pelletizing and will require expenditure of substantial sums for development. It is expected that by mid-1973, it will be necessary for the Corporation to replace certain of its present sources of merchantable ore by purchases on the open market or by the development of its Biwabik reserves in Minnesota. The most recent estimate with respect to the development of these reserves would require the expenditure of approximately $145 million by 1977. The Corporation is presently exploring means of financing the development of the reserves with the object of minimizing the cash investment of the Corporation.

During 1969, the Corporation and a subsidiary produced 6,385,000 net tons of merchantable ore for the Corporation's own use and the Corporation's share of merchantable ore produced by the other companies in which it has a stock interest was 1,496,000 net tons. This production amounted to approximately 95% of requirements. The Corporation purchased 438,000 net tons of merchantable ore from outside sources. During 1969, the Corporation consumed 7,732,000 net tons of merchantable ore. The blast furnace burden during the year consisted of approximately 28% pellets, 48% sinter and 24% coarse natural ores.

Amendments to the provincial mining law of Ontario effective January 1, 1970 provide for the refining in

Canada of all ores mined in Ontario unless an exemption has been granted. A 5-year exemption beginning January 1, 1970 has been secured for the operations in Ontario and provides that annual shipments of iron ore concentrates to points outside Canada may not exceed the tonnage shipped in 1968 without additional approval. Failure to obtain future exemptions could result in Ontario leases being declared void by the Lieutenant Governor in Council, in which event additional iron ore would have to be purchased.

Coal—The Corporation estimates that as of January 1, 1970 its reserves of metallurgical coal used to make coke (including new reserves for which the Corporation has agreed to enter into a lease) and its share of reserves of metallurgical coal of two companies in which it has stock interests of 64½% and 25% amounted to approximately 177,000,000 net tons, consisting of 139,000,000 net tons of high volatile coal at properties owned or leased along the Monongahela River near Pittsburgh and 38,000,000 net tons of low volatile coal at leased properties in West Virginia and Virginia.

During 1969, the Corporation produced 2,389,000 net tons of high volatile metallurgical coal for its own use and the Corporation's share of high volatile and low volatile metallurgical coal produced by the companies in which it has a stock interest was 1,247,000 and 52,000 net tons, respectively. This production amounted to approximately 88% and 5% of high volatile and low volatile metallurgical coal requirements, respectively, for the Pittsburgh and Aliquippa coke plants. Coke for the Cleveland Works is supplied from these coke plants, supplemented by purchased coke. Metallurgical coal, principally low volatile, purchased from outside sources amounted to 1,470,000 net tons. During 1969, the Corporation consumed 5,151,000 net tons of metallurgical coal.

Other Raw Materials—During 1969, the Corporation and a company in which it has a 7½% stock interest produced approximately 73% of the limestone and dolomite requirements for the Pittsburgh, Aliquippa and Cleveland Works from leased quarries in West Virginia

and Michigan. Other raw materials such as nickel, tin, zinc, ferromanganese and chrome are purchased in the open market from domestic and foreign sources. These are, and are expected to continue to be, in adequate supply except for nickel and nickel-bearing scrap which are in short supply. The shortage of nickel has resulted in curtailment in the production of nickel-bearing stainless steel products.

Employee Relations

During 1969, the Corporation and its subsidiaries had an average of approximately 41,400 employees. Substantially all hourly paid employees are represented by unions. The United Steelworkers of America represents approximately 30,000 employees and the United Mine Workers approximately 1,100 employees. The terms and provisions of the existing labor agreements between the Corporation and the United Steelworkers are substantially the same as those of the major competitors of the Corporation with that Union and form the basis for the agreements with most of the unions representing other organized employees of the Corporation except employees represented by the United Mine Workers.

The Corporation entered into new three-year labor agreements with the United Steelworkers of America effective August 1, 1968 and the United Mine Workers effective October 1, 1968. The agreements provide for increased insurance, pension and other employee benefits in addition to wage increases during the three-year period. Comparable benefits and wage increases have been provided to salaried employees to date. The increase in employment costs over the period covered by the agreements will approximate an average of 6% per year. As a result of a recent decision requiring increased incentive compensation coverage (10¢ an hour retroactive to August 1, 1968) which was rendered by a panel of arbitrators, convened in accordance with an understanding reached during the negotiation of the present three-year labor agreement by the United Steelworkers of America and eleven major steel corporations, the cost of the Cor-

poration's incentive compensation program will further increase employment costs.

Approximately 700 open hearth employees at the Pittsburgh Works engaged in an unauthorized work stoppage for approximately ten days in late June and early July 1969.

Operations at the Pittsburgh Works were adversely affected by a four-day strike of approximately 425 employees of The Monongahela Connecting Railroad Company in November 1969. Since most of the United Steelworkers at the Pittsburgh Works refused to cross the railroad workers' picket lines, the Corporation banked its blast furnaces and ceased steel production. A strike of approximately 240 employees of the Aliquippa and Southern Railroad Company during the same period resulted in some curtailment of steel production at the Aliquippa Works. The railroad companies are wholly owned subsidiaries of the Corporation which serve the Pittsburgh and Aliquippa Works.

Patent Litigation

In May 1961, Henry J. Kaiser Company (now Kaiser Industries Corporation) brought an action against the Corporation for royalties under an agreement which obligated the Corporation to pay a fixed royalty in installments if it used a patent controlled by the plaintiff in the operation of the Corporation's original basic oxygen furnace shop at its Aliquippa Works. The Corporation has denied the use of the patent and has asserted other defenses. In September 1961, Henry J. Kaiser Company and its European principals brought an action against the Corporation asserting that the plaintiffs' patent on the basic oxygen steel process is being infringed by the Corporation at its Cleveland Works. The Corporation believes that the patent is invalid, is not infringed and that agreements concerning the patent, and other patents, to which Kaiser or its European principals are parties constitute an illegal restraint of trade under the laws of the United States and render the patent unenforceable. The cases were consolidated for trial in the

United States District Court for the Western District of Pennsylvania in Pittsburgh. The taking of testimony was completed in March 1968 and briefs filed; however, additional testimony is being taken pursuant to a motion granted in September 1969. Patent counsel for the Corporation is of the opinion that the Corporation should prevail in the litigation; however, should plaintiffs prevail, patent counsel is of the opinion that plaintiffs' remedy would be limited to royalties and interest in an amount which would not materially affect the business of the Corporation. The United States District Court in Detroit held the same patent invalid in July, 1966, in an action involving the same plaintiffs and McLouth Steel Corporation. That decision was affirmed by the United States Court of Appeals for the Sixth Circuit in August, 1968. A petition for certiorari filed by plaintiffs was denied by the Supreme Court of the United States in that action on March 3, 1969. If the plaintiffs' patent is held valid, they may assert an infringement claim with respect to the new three-furnace basic oxygen furnace shop at the Aliquippa Works. The plaintiffs' patent will expire on July 23, 1974.

ANTITRUST LITIGATION AND VOTING TRUST

Of the issued and outstanding shares of Common Stock of the Corporation, 12,942,275 shares, or 81.4%, are owned beneficially by Jones & Laughlin Industries, Inc. ("JLI"), a wholly owned subsidiary of Ling-Temco-Vought, Inc. ("LTV").

On April 14, 1969, the United States of America filed a civil action in the United States District Court for the Western District of Pennsylvania in Pittsburgh at Civil Action No. 69-438 naming LTV, JLI and the Corporation as defendants and alleging that the acquisition by LTV and JLI of Common Stock of the Corporation violated Section 7 of the Clayton Act. LTV and JLI have filed answers with the Court which in all material respects deny the allegations made.

A consent preliminary injunction was entered in the civil action on April 14, 1969 which provides that pend-

ing final adjudication, the business and financial operations of the Corporation must be maintained separate and independent from LTV, JLI and other subsidiaries of LTV and that LTV and JLI will take no action which will impair their ability to comply with any court order requiring divestiture. Under the consent preliminary injunction, pending final adjudication of the civil action, no officer, employee, director or designee of LTV may serve as an officer or director of the Corporation except that not more than three persons nominated by the Board of Directors of the Corporation may serve as directors but not employees of LTV.

The 12,942,275 shares of Common Stock of the Corporation owned by JLI have been deposited in a voting trust which will terminate on the later of February 1, 1971 or the final adjudication of the civil action, unless sooner terminated by the voting trustees. Until termination, the voting trustees will have the right, by action of a simple majority, to vote the shares held in the voting trust except that written approval of JLI is required with respect to any matter relating to a reduction of the stock interest of JLI in the Corporation to less than a majority interest. The voting trustees must be appointed by the Board of Directors of the Corporation and no officer, employee or director of LTV or JLI (other than a person who is also an officer or director of the Corporation) is eligible to serve as a voting trustee. The voting trustees appointed by the Board of Directors of the Corporation are William J. Stephens, Charles M. Beeghly and H. S. Harrison.

Proposed Settlement of Civil Action

On March 10, 1970, the parties to the civil action filed a stipulation with the Court by the terms of which a Final Judgment, consented to by all parties without trial or adjudication of any issue and without the Final Judgment constituting any evidence or admission by any party, may be entered by the Court at any time after the expiration of 30 days, i.e., on or after April 10, 1970. The stipulation reserves to the plaintiff the right to withdraw its consent to the entry of the Final Judgment

within the 30-day period. Under the proposed Final Judgment, LTV is required to divest all its interest, direct and indirect, in either (a) the Corporation or (b) Braniff Airways, Inc. and The Okonite Company, within three years of entry of the Final Judgment. The three-year period may be extended under certain circumstances; however, if the divestiture requirements have not been met within the time specified, LTV will be required to divest all its interest in the Corporation. LTV has stated that it intends to divest all its interest in Braniff and Okonite.

The proposed Final Judgment contains restrictions upon the defendants, including the Corporation. During the divestiture period, the viability of the businesses which may be divested may not be impaired and, unless the plaintiff consents (or fails to object upon 30 days' written notice in the case of acquisitions), the Corporation may not reorganize, recapitalize, dispose of assets other than in the ordinary course of business, make acquisitions or pay dividends in excess of the current rate except out of current earnings. During a 10-year period, the Corporation is under prohibitions substantially comparable to those consented to by United States Steel Corporation in August 1969 against engaging in reciprocal trading practices. If the Corporation is not divested, the Corporation is also prohibited during the 10-year period, without the consent of the plaintiff or approval of the Court, from acquiring 1% or more of the voting securities of any company with assets, net of related valuation reserves, in excess of $100,000,000 or from acquiring from any one person or group of persons under common control tangible or intangible assets or good will, net of related valuation reserves, in excess of that amount.

If the proposed Final Judgment is entered, the consent preliminary injunction entered on April 14, 1969 will be dissolved. At that time, officers and directors of LTV, JLI and other subsidiaries of LTV will no longer be prohibited from serving as officers or directors of the Corporation or as voting trustees of the voting trust. An agreement has been entered into by the parties to

the present voting trust which provides that as soon as practicable after the proposed Final Judgment has become final, the present voting trust will be terminated and the 12,942,275 shares of Common Stock of the Corporation owned beneficially by JLI will be deposited in a new voting trust of which James J. Ling and Clyde Skeen will become voting trustees in addition to Messrs. Stephens, Beeghly and Harrison. Mr. Ling is Chairman of the Board and Chief Executive Officer of LTV and JLI and Mr. Skeen is President of LTV and JLI. The new voting trust will result in the same persons being voting trustees as were voting trustees prior to the commencement of the civil action, will terminate on February 1, 1971, unless sooner terminated by the voting trustees, and will be substantially identical to the present

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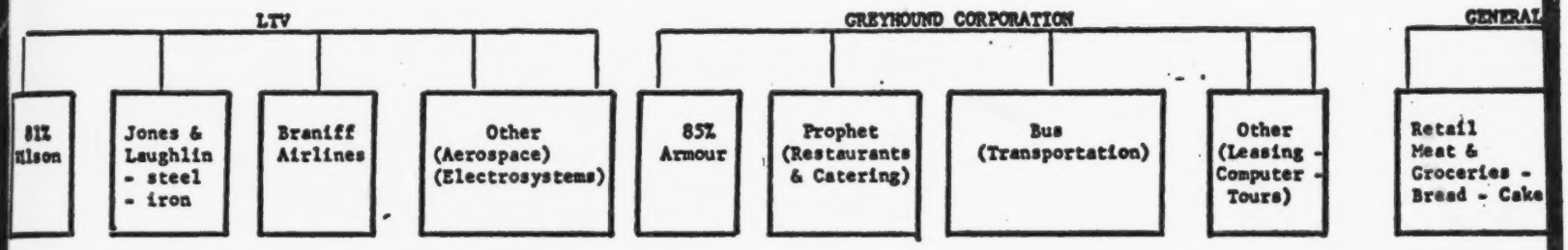

Total Sales	$3,750,000,000	Total Sales	$2,823,000,000	Total Sales	
Packer (Wilson)	1,286,000,000	Packer (Armour)	2,153,000,000	Packer (Armou	
Other Businesses	2,464,000,000	Other Businesses	670,000,000	Other Compani	
Decree Products (iron and steel)	1,056,000,000	Decree Products (Restaurants)	124,000,000	Decree Produc (Food Stores Bread - Baki	
% of Decree Products to All Other Businesses Excluding Wilson	43%	% of Decree Products to All Other Businesses Excluding Armour	18%	% of Decree P To All Othe Businesses Excluding A	

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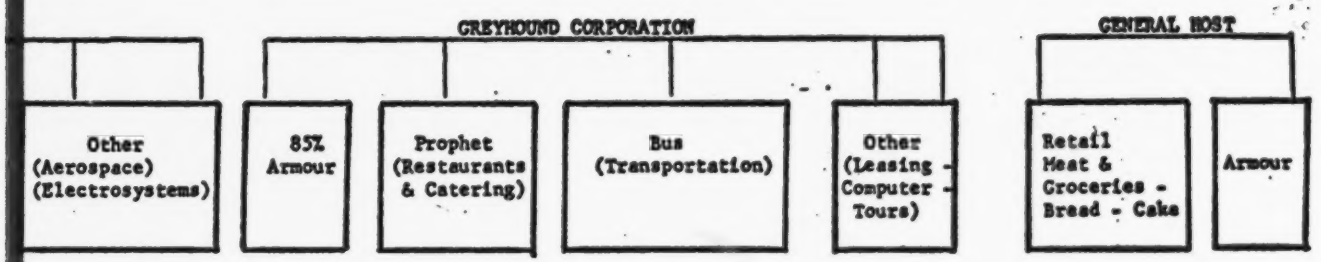

00,000	Total Sales	$2,823,000,000	Total Sales $2,353,000,000
00,000	Packer (Armour)	2,153,000,000	Packer (Armour) 2,153,000,000
00,000	Other Businesses	670,000,000	Other Companies 200,000,000
00,000	Decree Products (Restaurants)	124,000,000	Decree Products (Food Stores & Bread - Baking) 200,000,000
	% of Decree Products to All Other Businesses Excluding Armour	18%	% of Decree Products To All Other Businesses Excluding Armour 100%

EXHIBIT C

[Caption Omitted in Printing]

FURTHER MEMORANDUM FOR THE UNITED STATES

In its response to our Memorandum and Application of May 20, 1970, The Greyhound Corporation (1) agrees that this Court should proceed to decide the case as submitted to it, necessarily acknowledging that the case is not moot and that there is a continuing controversy; (2) argues the merits of the government's case against Greyhound; and (3) disputes the appropriateness of the relief pendente lite that we have requested against Greyhound's increasing and utilizing its newly acquired control of Armour & Company. The circumstances justify a brief further statement by the government.

1. *The facts concerning Greyhound's food interests and their consistency with the meat packers decree are matters for the district court to consider on remand.*

Greyhound apparently disputes our assertion that it is engaged in food businesses that would be prohibited to Armour, thereby seeking to distinguish its situation from that of General Host. Such questions of fact and decree interpretation are precisely what we contemplate the district court would consider on remand if the government prevails in this Court; they obviously should not be resolved here. For present purposes, it is pertinent only that the government has a substantial case that Greyhound's ownership of Armour is inconsistent with the decree, a case that the government would pursue in the district court unless there is an adverse decision in the pending appeal. Greyhound concedes that it buys and sells a wide variety of foods in its multimillion-dollar catering services and restaurants, and the decree covers, *inter alia*, the "selling, transporting * * * distributing, or otherwise dealing in [such foods] * * *, except when such products or commodities are purchased, transported, or used * * * in the operation of [the packers'] restaurants, laundries or other conveniences, primarily for the benefit of their employees * * *" (A. 31)

Without arguing the point fully here, we submit that Greyhound's catering and restaurant operations would plainly be prohibited to Armour under the decree.[1]

2. *Interim relief against Greyhound is appropriate and necessary.*

Greyhound's claim of unfairness in the interim relief we seek against it—a simple preservation of the status quo until the legality of its ownership of Armour is determined—is without substance. As we recite in our Memorandum and Application, Greyhound was formally and publicly notified as early as November 24, 1969, that the United States regarded its potential ownership of Armour as inconsistent with the meat packers decree, and that position as been unequivocally repeated on a number of occasions. As soon as the United States became aware that Greyhound was seeking Interstate Commerce Commission approval for consummation of its contract with General Host, it informed the Commission and Greyhound that it would challenge the transaction under the meat packers decree if it were to occur, and accordingly requested the Commission to stay its hand. And when the Commission nonetheless approved the transaction, we promptly advised General Host and Greyhound of our intention to ask this Court to prohibit consummation until its legality could be determined. The government has thus proceeded in an orderly manner, and it was only the precipitous action of Greyhound and General Host—only hours after the Commission acted—that disrupted this orderly procedure. Greyhound can

[1] Greyhound's elaborate discussion of a proposed settlement (still under consideration in a separate case in another district court), suggesting as one permissible alternative LTV's rentention of ownership of a steel company and another packer (acquired in 1967), is irrelevant. A proposal of settlement surely does not make law, especially in light of the serious anticompetitive factors involved in the underlying case; moreover, the prohibition under the meat packers decree to which Greyhound points comes under the heading of "miscellaneous articles" (A. 33) and does not involve the food prohibitions that are central to the decree. The consistency of the proposed settlement with the meat packers decree has not been expressly in issue in that case.

hardly claim that it has been misled or lulled by anything the government has done or failed to do.[2]

The necessity and urgency of interim relief have been emphasized by matters that have come to our attention since our Memorandum and Application was filed. It has been reported in the press that Greyhound's chief executive officer has announced to its shareholders that "Greyhound foresees no antitrust difficulties and is proceeding to reorganize Armour by discontinuing 'unproductive (Armour) operations' and 'consolidating' many of its activities to cut costs." Wall Street Journal, May 20, 1970, p. 15, col. 1. He further told a press conference that "Greyhound intends to continue operating Armour without regard to any antitrust threats, unless ordered to do otherwise by a court * * *." Wall Street Journal, May 22, 1970, p. 9, col. 2. We ask only that Greyhound be enjoined from making any such changes in Armour, or from increasing or otherwise utilizing its control, until the legality of such control can be considered in an orderly manner.

Accordingly, we believe that Greyhound's submission and its other public statements underline the appropriateness of the relief that we have requested in our Memorandum and Application of May 20, 1970. The Court should decide the appeal before it, remanding the case to the district court for consideration of the legality of Greyhound's control in light of the decision here, and should preserve the status quo in the interim.

Respectfully submitted.

ERWIN N. GRISWOLD
Solicitor General

MAY 25, 1970.

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[2] We thus cannot credit Greyhound's assertions that on May 14, 1970 (when the hasty consummation took place) it was "inconceivable" to it that the government would object to its ownership of Armour (Greyhound's Answer, p. 10) or its even more extreme suggestion that the government has somehow "entrapped" Greyhound (*id.*, p. 5). We cannot conceive of any way that the government could have made its position more clear.

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

UNITED STATES OF AMERICA, APPELLANT

v.

ARMOUR & CO. AND GREYHOUND CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 15–21) is not reported.

JURISDICTION

The order of the district court, dismissing the government's petition to make Greyhound Corporation a party and to issue an injunction against it, was entered on June 30, 1970 (App. B, *infra*, p. 22). The notice of appeal was filed July 31, 1970 (App. C, *infra*, p. 23). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *Armour & Co., and General Host*

Corporation, probable jurisdiction noted, 396 U.S. 811, judgment vacated and case remanded with instructions to dismiss as moot, 398 U.S. 268; *United States* v. *United Shoe Machinery Corp.,* 391 U.S. 24

QUESTIONS PRESENTED

The Meat Packers Consent Decree of 1920 (App. D, *infra,* pp. 24–42) prohibits Armour & Co. from dealing directly or indirectly in more than 100 specified products, mostly food products, including many customarily found in food service operations and restaurants. Greyhound Corporation, which through its divisions and subsidiaries is in the industrial food service and restaurant business, was not a party to this decree. The questions presented are:

1. Whether the acquisition by Greyhound of a controlling stock interest in Armour creates a relationship which interferes with Armour's adherence to the decree or otherwise violates the decree.

2. If so, whether the district court had the power to make Greyhound a party to the decree proceedings and order Greyhound to terminate that relationship.

STATUTES INVOLVED

Section 5 of the Sherman Act, 15 U.S.C. 5, provides:

> Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and

subpoenas to that end may be served in any district by the marshal thereof.

The All Writs Act, 28 U.S.C. 1651, provides in pertinent part:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

The general issues in this case are the same as in *United States* v. *Armour & Co. and General Host Corporation* (No. 103, 1969 Term), probable jurisdiction noted 396 U.S. 811, argued March 5, 1970, judgment vacated with instructions to dismiss as moot, 398 U.S. 268, following the transfer of control of Armour & Co. from the General Host Corporation to the Greyhound Corporation, the appellee here. Our brief filed in the *General Host* case (which we incorporate here by reference) fully describes the background of that case and this; we shall here simply summarize this background and then describe the proceedings in the district court relating to Greyhound that followed this Court's disposition of *General Host*.

The Meat Packers Consent Decree of 1920 enjoined for the indefinite future Armour and other large meat packers from "directly or indirectly * * * dealing in" some 114 specified food products and 30 other products. They were also perpetually enjoined from "owning, either directly or indirectly, * * * any capital stock or other interest whatsoever" in any firm deal-

ing in any of these products (App. D, *infra*, pp. 27–31, 36).

On January 20, 1969, the government filed a petition to make General Host Corporation a party to the decree and forbid it from acquiring control of Armour because General Host is engaged in food businesses forbidden to Armour (G.H. App. 47–49). On January 30, 1969, the district court denied the petition, ruling that while the decree prohibits Armour from holding any interest in a company handling any of the prohibited products, it does not prohibit such a company from taking over Armour (G.H. App. 172, 151).[1]

The Government appealed and this Court noted probable jurisdiction on October 13, 1969. The case was then briefed on the merits and oral argument was had on March 5, 1970.

Meanwhile, General Host had entered into an agreement to sell its controlling stock interest in Armour to Greyhound; because Greyhound was a regulated motor carrier, it needed Interstate Commerce Commission approval for the acquisition. The Department of Justice advised Greyhound and General Host on November 24, 1969, that—because Greyhound was also engaged in food businesses prohibited to Armour under the decree—it considered Greyhound's potential ownership of Armour just as inconsistent with the decree as General Host's ownership. The Department expressed this same position in a paper filed with the Interstate Commerce Commission and accordingly urged the Commission to de-

[1] G.H. App. refers to the Appendix in the *General Host* case.

fer action on Greyhound's application until this Court's decision. The Commission declined, however, to do so and granted the application on the afternoon of May 14, 1970 (*The Greyhound Corporation Securities*, Order dated May 14, 1970, served May 15, 1970, I.C.C. Fin. Dkt. No. 26056). The transfer of the stock to Greyhound was consummated early that same evening.[2] At the time of the consummation, the United States was about to apply to Mr. Justice Marshall, at his home, for a temporary injunction against such consummation. The government had previously informed General Host's counsel of its intention to seek such relief and had requested that the transaction be deferred for 24 hours to permit the filing and determination of the application; General Host's counsel forwarded the request to the parties in Chicago, where the closing took place, but they refused the postponement.[3]

General Host then moved to dismiss the case in this Court for mootness, pointing out that it no longer owned the Armour stock the government sought to have divested. The government opposed, urging that the transfer of the stock did not give the relief sought—which was divestiture consistent with the decree, not substitution of an equally objectionable owner. The Court, however, on June 1, 1970, vacated

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[2] As a result of the transfer, Greyhound, which already held a substantial minority interest in Armour, acquired approximately 86 percent of Armour's stock. Greyhound has announced its intention to acquire all of the remaining Armour stock.

[3] See our Memorandum in Opposition to Motion to Dismiss for Mootness, No. 103, 1969 Term, filed on May 22, 1970.

the judgment below and directed the district court to dismiss the petition against General Host as moot, Mr. Justice Douglas dissenting, 398 U.S. 268.

On June 18, 1970, the government filed a new petition in the district court, alleging (as it had against General Host) that Greyhound is engaged in businesses forbidden to Armour or any firm in which Armour has any direct or indirect interest, and that Greyhound's ownership of Armour therefore creates a corporate relationship forbidden by the Meat Packers Decree. The petition (like that in *General Host*) prayed that Greyhound be brought before the court under Section 5 of the Sherman Act and that an order supplemental to the decree be entered, enjoining Greyhound from acquiring any additional stock or acting to exercise control over or influence the business affairs of Armour, and requiring Greyhound to divest itself of the Armour stock.

The affidavit supporting the government's petition showed that Greyhound deals in food products through its divisions and wholly-owned subsidiaries, which provide industrial catering services and operate restaurants, cafeterias and other eating facilities in commercial plants, bus stations and elsewhere;[4] and that in 1969 Greyhound had revenues of about $124 million from food operations, which accounted for

[4] Among food items covered by the decree are bread, flour, sugar, fresh milk and cream, and many other food products customarily bought and sold in the catering service and restaurant business, subject to the exception that the meat packer defendants may deal in these products "in the operation of [the packers'] restaurants, laundries, or other conveniences, primarily for the benefit of their employees * * *" (App. D, *infra*, pp. 27–28)

over 16 percent of its total revenues of $688 million.[5] Greyhound filed no response to the government's petition, but it was represented by counsel at the hearing thereon (App. A, *infra.* p. 15).

The district court denied the petition against Greyhound for essentially the same reasons the same judge had given in denying relief against General Host. Ruling from the bench, the district judge stated that, since Greyhound itself is not a party to the original decree and is not charged with assisting or causing Armour to do any forbidden act, it is not "bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree" (App. A, *infra,* p. 18). In disposing of the government's contention that by acquiring Armour stock, Greyhound has placed Armour in a "corporate relationship" with a company that deals in prohibited food items, the court held that:

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[5] The uncontradicted affidavit stated:

"The Greyhound Corporation, through its divisions and wholly-owned subsidiaries, is engaged in the business of jobbing, selling, distributing, or otherwise dealing in products or commodities listed in the consent decree. Its subsidiary, Prophet Foods Company, is engaged in industrial catering. It operates eating facilities in industrial plants, schools, hospitals, nursing homes, and other commercial establishments. In 1968 it had sales in excess of $77 million. Through Post Houses, Inc., Greyhound operates restaurants in its bus stations and at rest and meal stop locations. Post Houses had sales in excess of $33 million in 1968. Greyhound's Miami Cafeterias, Inc., operates a small chain of cafeterias in Florida and Georgia, with sales of more than $3 million in 1968. In 1969 Greyhound's food operations had revenues of $123.8 million and accounted for over 16% of its total revenues."

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> the decree does not speak in terms of corporate relationships; it speaks in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree [*ibid.*].

A consent decree, the court ruled, has no "purpose" that can be "the basis for an extension of its terms to a situation not expressly covered thereby" (*id.* at 19). It therefore dismissed the petition for failure to state a claim upon which relief may be granted (*id.* at 21).

THE QUESTIONS ARE SUBSTANTIAL

This case is a continuation of the litigation over the interpretation of the Meat Packers Decree of 1920 which, while awaiting resolution in this Court last term, was interrupted by Greyhound's acquisition of General Host's interest in Armour. The substantive legal issue remains the same: whether Armour may be controlled by a firm substantially engaged in the general food business when Armour itself is forbidden to have any interest whatsoever in such firm. Armour's key position in the nation's food business as the second largest meat packer is underscored by the rapid changes in ownership it has recently undergone, reflecting the business community's appreciation of its great competitive potential. That same potential, in turn, underscores the continuing importance of the structural restraints imposed on Armour by the 1920

decree. Under those restraints, Greyhound's control of Armour is objectionable for the same reasons as was General Host's. The reasons for plenary consideration of this case are therefore the same as those that moved the Court to hear oral arguments last Term in the *General Host* case.

We do not repeat here the arguments we presented in detail in our *General Host* brief last Term, which show why the district court's dismissal of the government's petition against General Host—and therefore also the same disposition of the instant petition against Greyhound—was erroneous. Rather, we respectfully refer the Court to our argument there.[6] Our brief in *General Host* shows how the prophylactic structural separation decreed in 1920 between the economic power of the meatpacking defendants (*i.e.*, Armour) and the forbidden food lines is destroyed by any combination of them under single ownership, regardless of the form of the transaction that creates the combination and regardless of who initiates it; the same economic threat is present whether Armour itself engages in a prohibited business, acquires an interest in a firm in that business, consents to its own acquisition by such a firm, or is acquired by such a firm against its will by a successful tender or exchange

[6] Copies of the government's jurisdictional statement, its brief on the merits and the Appendix in *General Host* are being served on Greyhound, as well as a copy of the memorandum in Opposition to Motion to Dismiss for Mootness.

offer to its stockholders.[7] That brief also shows that a court of equity is not impotent to prevent such frustration of its decree, whether the basis of the decree is adjudication or the consent of the parties; Greyhound, like General Host before it, can be brought in as a party for the purpose of entering a supplemental order against it in aid of the decree.

As we explain in our *General Host* brief, our position is not that the decree should be read or modified to run against the world, to subject persons not named as parties to punishment for contempt. On the contrary, the government's petition requested the district court to bring Greyhound before it for a hearing and adjudication whether Greyhound's ownership of Armour interferes with or violates the decree; then and only then would the district court enter an order that would be binding on Greyhound *in personam*.[8] To

[7] Obviously a decree cannot meaningfully order a defendant not to allow itself to be taken over by a company in a forbidden business; thus there could be no logic to any suggestion that the absence of any express provision on takeovers means that the Meat Packers Decree was intended to allow them.

[8] In its Answer (pp. 8–9) to the government's Memorandum on Mootness in *General Host* (which included a request for injunctive relief against Greyhound) Greyhound apparently contended that it is not in any line of business forbidden under the decree. We find this hard to credit in view of the apparently undisputed facts. Any suggestion that restaurants do not "deal" in food within the meaning of the decree is disproved by the clear negative implication of the decree's exception for "restaurants * * * primarily for the benefit of [the meat packers'] employees" (p. 6, n. 4, *supra*).

say that the court could not remedy such a situation, is to treat a structural antitrust decree as nothing more than a means for preventing the particular wrongdoers originally brought before the court from repeating their misconduct, without any force to prevent third persons from recreating precisely the economic relationship that the decree was designed to eliminate.[9] Such a principle would seriously undermine the efficacy of the government's many structural antitrust decrees, whose very reason for existence is to prevent anticompetitive business relationships from coming into existence without the need for *de novo* proof of wrongdoing or harm.

For these reasons—as elaborated in our brief in *General Host*—the district court erred in dismissing the government's petition to require Greyhound to give up its interest in Armour, which at the time of the district court hearing amounted to 86 per cent of the stock, with an intention on Greyhound's part to increase it to 100 per cent ownership. If the decision below is allowed to stand, Greyhound will be in the

[9] For example, under the district court's ruling, any of the great supermarket chains could acquire complete control of any of the defendant packers, although the packers would be in contempt if they acquired any interest in a food chain. More concretely, although Swift & Co., one of the defendants, was required by the decree to divest itself of any interest in Libby, McNeil and Libby, a leading canner, Libby could—if the district court is right—presumably turn around and restore the relationship by acquiring control of Swift.

position of commanding Armour's vast competitive leverage as a huge meat packer side by side with its own substantial operations in the forbidden food lines, which produce $124 million in annual food revenues derived mostly from retail food operations. Thus, the wall that has been built and maintained over more than fifty years to separate the powerful meatpackers from companies in the general food business will have been breached by the devices of modern corporate expansion. We do not see how such a situation can realistically be squared with the continued existence of the Meat Packers Decree as a meaningful bulwark of competition in the food industry.

CONCLUSION

For the foregoing reasons, we submit that this case warrants plenary consideration by this Court; the judgment of the district court should be reversed and the case remanded with instructions directing that Greyhound Corporation be made a party and that the relief sought in the government's petition be granted.[10] In view of the fact that the issues raised here were fully briefed and argued last Term, the Court may deem it appropriate to dispose of this case on the basis

[10] Although Greyhound has not been made a party, it was represented at the hearing on the government's petition, where it made no effort to present its views to the district court. While we would not object to a further hearing on the question whether Greyhound's food operations are such that they would be forbidden to Armour under the decree—if Greyhound desires to dispute the government's affidavit (see p. 10, n. 8, *supra*)—we see no need for a further hearing otherwise.

of this jurisdictional statement (incorporating as it does the government's brief in the *General Host* case) and Greyhound's response hereto.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
WALKER B. COMEGYS,
Deputy Assistant Attorney General.
JAMES VANR. SPRINGER,
Deputy Solicitor General.
HOWARD E. SHAPIRO,
IRWIN A. SEIBEL,
Attorneys.

SEPTEMBER 1970.

APPENDIX A

In the United States District Court, Northern District of Illinois, Eastern Division

No. 58 C 613

UNITED STATES OF AMERICA, PLAINTIFF

v.

SWIFT & COMPANY, ET AL., DEFENDANTS

Transcript of Proceedings had in the above-entitled cause before the Honorable JULIUS J. HOFFMAN, one of the judges of said court, sitting in his courtroom in the United States Courthouse at Chicago, Illinois, on Tuesday, June 30, 1970, at 10:00 o'clock a.m.

Present: Miss Edna Lingreen and Mr. Peter Goldberg, Washington Office, Anti-Trust Division, Department of Justice, on behalf of the government; Mr. Edward L. Foote, Mr. Edward J. Wendrow and Mr. Robert Bernard, General Counsel, on behalf of Greyhound Corporation.

* * * * *

The COURT. The government has filed a petition in order, in its own words, "to prevent and restrain interference with and obstruction of, and to remedy a situation inconsistent with, the decree entered by the Supreme Court of the District of Columbia on February 27, 1920 in Equity Cause No. 37623, which cause was transferred to this court by order dated January 15, 1958." The decree entered in 1920 was upon

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the consent of the parties to a civil antitrust action under the Sherman Act, 15 U.S.C. paragraphs 1, 4— the government and 135 defendants. The defendants were the so-called "big five" meat-packing companies, one of which was Armour and Company, plus 80 corporate subsidiaries and 50 of their officers and directors. The decree is summarized in United States v. Swift & Co., 189 F. Supp. 885 (N.D. Ill., 1960). Put simply, the defendants were enjoined from dealing in meat at retail and from any dealing wholesale or retail, in enumerated "unrelated lines" of commerce: 114 non-meat food products and thirty other items.

The petition which the government has now filed seeks to enjoin interference with the 1920 Swift decree by the Greyhound Corporation. It is alleged in the government's petition that Greyhound has acquired 86 percent of the outstanding common stock of Armour and Co., and that it has announced an intention to acquire the remaining outstanding stock. It is further alleged that Greyhound, through its divisions and wholly-owned subsidiaries, does substantial business in products or commodities within the scope of the 1920 Swift decree. Based on these alleged facts, the government contends that Greyhound is in a position to control Armour, and that such control "is inconsistent with, obstructs, and interferes with the decree . . . by putting Armour in a corporate relationship with a company which deals in food items prohibited to Armour by the decree." This proposition is supported by the government's addtional claim that such a corporate relationship "places Armour in the position of indirectly engaging in or carrying on" the businesses of the Greyhound divisions and subsidiaries. The specific relief sought by the government is (1) an order restraining Greyhound from acquiring any additional Armour stock and from taking any

action to exercise control over or to influence the business affairs of Armour, and (2) an order that Greyhound divest itself of all of its Armour stock.

It is important to bear in mind what the government is not seeking. The government is not seeking to enjoin Greyhound from committing any violation of the antitrust laws. There is no charge that Greyhound has or has threatened to conspire to restrain trade, to monopolize any market, or to commit any other offense against the antitrust laws. Nor is the government seeking to prevent a violation of the 1920 consent decree by Armour, or by any of the defendants that were parties thereto. The government charges no violation of the decree by Armour, and it seeks no injunction against Armour. Thus, the entire substance of the government's petition here is the alleged interference with the 1920 decree by a nonparty, Greyhound.

The consent decree entered in 1920 was in the nature of a permanent injunction. Rule 65(d) of the Federal Rules of Civil Procedure provides that "Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order . . ." This rule states what has long been accepted, that an injunction binds only those who are parties to the action. As Judge Learned Hand said in Alemite Manufacturing Corp. v. Staff, 42 F. 2d 833 (2d Cir. 1930):

> . . . no court can make a decree which will bind anyone but a party; a court of equity . . . cannot lawfully enjoin the world at large . . .

Thus, an antitrust consent decree cannot bind one who was not a party to the action. United States v. Carter Products, Inc., 211 F. Supp. 144 (S.D. N.Y. 1962).

Of course, this is not to say that it is impossible for a non-party to violate an injunction. Defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors who were not parties to the original action. Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9 (1945). A non-party can violate a decree not by committing acts itself that are prohibited by the decree, but only by helping to bring about an act of a party which is prohibited by the decree. Alemite Mfg. Corp. v. Staff, 42 F. 2d at 833. Accord, United Pharmacal Corp. v. United States, 306 F. 2d 515 (1st Cir. 1962); Kean v. Hurley, 179 F. 2d 888 (8th Cir. 1950).

From the foregoing it is clear that Greyhound may not lawfully assist any party, such as Armour, in committing acts prohibited by the 1920 consent decree. But it also follows that Greyhound, which was not a party to the 1920 action, and which at that time had no interest in any of the parties, is not itself bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree. It is the latter that the government now seeks to do. The government has not charged that Greyhound has or threatens to cause or assist Armour, or any of the original defendants, in dealing in any of the lines of commerce prohibited to them by the decree. The government's petition states that by acquiring Armour stock, Greyhound has placed Armour in a "corporate relationship" with a company that deals in prohibited food items. But the decree does not speak in terms of corporate relationships; it speaks in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree.

It is well accepted that consent decrees are to be strictly construed. As the court said in American Ra-

dium Co. v. Hipp. Didisheim Co., 279 F. 601, 603 (S.D. N.Y. 1921):

> Consent decrees, as their name implies, are the result of an agreement, . . . They are to be read within their four corners, and especially so because they represent the agreement of the parties, and not the independent examination of the subject-matter by the court. They are binding only to the extent to which they go. Neither court nor party can write in them what is not there . . .

This holding has been cited with approval in Dart Drug Corp. v. Schering Corp., 320 F. 2d 745, 749 (D.C. Cir. 1963); and Star Bedding Co. v. The Englander Co., 239 F. 2d 537, 542 (8th Cir. 1957). And as the court said in Artvale Inc. v. Rugby Fabrics Corp., 303 F. 2d 283, 284 (2d Cir. 1962): "A consent decree represents an agreement by the parties which the court cannot expand or contract. Butler v. Denton, (150 F. 2d 687 (10th Cir. 1945))." The government argues that the corporate relationship created by Greyhound's acquisition of Armour is "inconsistent" with the purposes of the decree, even if a violation of the letter of the decree cannot be shown. The so-called "purpose" of a consent decree cannot be the basis for an extension of its terms to a situation not expressly covered thereby. In the first instance, such a procedure would contradict the rule of strict construction of consent decrees. In addition, a "purpose" approach is wholly inappropriate because it is the parties who have purposes: the government to secure some relief while conserving resources; the defendants to save money and time, avoid the prima facie evidence rule in private actions, and limit the risk of a more stringent remedy.

It is impossible to see how a general scheme can be surmised from provisions which represent a com-

promise of the parties with respect to the most crucial matters in an antitrust proceeding. And, as it has been observed, nowhere is such a compromise more evident than in the initial decree entered in this case. See Note, "Flexibility and Finality in Antitrust Consent Decrees," 80 Harv. L. Rev. 1303, 1315 (1967). If the situation created by Greyhounds acquisition of Armour stock is inconsistent with whatever "purposes" the government believes attach to the 1920 decree, there is still no showing of a violation, or of the kind of "interference" that will warrant an injunction against a non-party. Of course, if the situation thus created is inconsistent with the antitrust laws, the government may bring an independent action against Greyhound. But that is not what we have here.

Finally, the only case cited by the government in support of its petition to summon Greyhound is wholly inapposite to the situation here. United States v. Bayer Co., 105 F. Supp. 955 135 F. Supp. 65 (S.D. N.Y. 1952, 1955) involved the summoning in a supplementary action a company that sought to compel enforcement of contracts that had been held violative of the antitrust laws and the performance of which had been enjoined in an earlier action. The summoned party was a party in interest to the original unlawful contracts, and was directly seeking to compel the original defendants to perform the prohibited agreements. Thus the summoned party was made an additional party to the original proceeding and was made subject to the terms of the original injunction. The situation here is entirely dissimilar. Greyhound had no interest in any way in any of the defendants or their operations when the decree was entered in 1920. And the government has not alleged that Grey-

hound has, or is about to, take any action in order to cause Armour to violate the 1920 decree.

Having considered the government's petition and the supporting memoranda, I have concluded that the petition should be dismissed for failure to state a claim upon which relief may be granted.

Mr. Clerk, the petition of the United States of America to summon the Greyhound Corporation and for an injunction will be dismissed.

APPENDIX B

United States District Court, Northern District of Illinois, Eastern Division

Name of Presiding Judge, Honorable JULIUS J. HOFFMAN.

Date 6–30–70.

Cause No. 58C613.

Title of Cause: U.S.A. vs. Swift & Co., et al.

Brief Statement of Motion: Hrg. on Petn. of Govt. for an injunction and other relief, against Greyhound Corp.

* * * * *

Petition of the U.S.A. to summond the Greyhound Corp. and for an injunction, dismissed. Application of the Government for a stay pending appeal against Greyhound, *denied.*

APPENDIX C

United States District Court, Northern District of Illinois, Eastern Division

Civil No. 58 C 613

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY, ET AL., DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America, petitioner, appeals to the Supreme Court of the United States from the order entered in this action on June 30, 1970 dismissing its petition dated June 18, 1970.

This appeal is taken pursuant to 15 U.S.C. 29.

IRWIN A. SEIBEL,
Attorney,
Department of Justice,
Washington, D.C. 20530.

Appendix D

In the Supreme Court of the District of Columbia

No. 37623. Equity

THE UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY AND OTHERS, DEFENDANTS

DECREE AND CONSENTS

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto daily authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation

in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and

described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are pur-

chased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse-radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapple.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Dates.
Raisins.

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca-Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinace chili.
Tomato catsup.

7. Coffee, tea chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, walnuts. But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.
Oats.
Hominy.
Hominy feed.
Horse feed.
Brewers' flakes.
Brewers' grit.
Brewers' meal.
Buckwheat.
Canned hominy.
Clipped oats.
Corn grits.
Ground meal.
Ground oats.
Ground corn.
Cracked corn.
Crushed white oats.
Feed barley.
Feed meal.
Feed wheat.
Rolled oats.
Standard middlings.
Standard spring brand.
Spaghetti.
Vermicelli.
Macaroni.
Corn flakes.
Wheat foods.

12. Grain

13. Miscellaneous articles, to wit:

Cigars.
China.
Furniture.
Bluing starch.
Fence posts and wire fences.
Alfalfa meal.
Babbitt.
Bar iron.
Binding and twine.
Brass Castings for heavy ordnance.
Brick.
Builders' hardware.
Bumping posts for railroads.
Cement, lime, plaster
Doors and windows.
Dried brewers' grains.
Lath.
Pitting and fruit handling machinery.
Roofing.
Sand and gravel.
Shingles.
Soda fountains or parts thereof.
Structural steel.
Tile.
Waste.

14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50% or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following to wit:

Asparagus.
Navy beans.
Lima beans.
Peas.
Beets.
Corn.
Okra.
Potatoes.
Tomatoes.
Celery.
Garlic.
Horse radish.
Pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapple.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Raisins.
Dates.

4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Olives.
Chili sauce.	Oyster cocktail sauce.
Cinnamon.	Pepper.
Cloves.	Pickles.
Mustard.	Spinace chilli.
Mustard seed.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following: to wit: Almonds, pecans, walnuts. But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however,

That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants any capital stock or other interests whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public coldstorage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by them

selves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered

by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and

associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard, shall as a part of said purchase, agree with such defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date

when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity

of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transactions consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation

defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stock yard market companies, stock yard terminal railroads, stock yard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become neces-

sary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

WALTER I. MCCOY,
Chief Justice.

FEBRUARY 27, 1920.

U.S. GOVERNMENT PRINTING OFFICE: 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 759

UNITED STATES OF AMERICA,
Appellant,

vs.

ARMOUR & CO. AND GREYHOUND CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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IN THE

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OCTOBER TERM, 1970.

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UNITED STATES OF AMERICA,
Appellant.

vs.

ARMOUR & CO. AND GREYHOUND CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

Greyhound Corporation (Greyhound) moves, pursuant to Rule 16, Par. 1(c), of the Rules of this Court, that the judgment of the District Court be affirmed on the grounds that the actual questions on which the decision of this cause depends are so insubstantial as not to need further argument.

SUMMARY STATEMENT.

An exhaustive brief on the merits filed as a "jurisdictional statement" asks this Court to enter certain ultimate relief against a non-party which has never been served with summons, appeared or answered. The unprecedented procedure advanced asks that Greyhound without any form of

substantive hearing be found to be in violation of the terms of a 1920 decree.

Presumably because temporary relief was again being sought, the Government, after the filing of its new petition in the District Court against Greyhound, served notice on attorneys representing Greyhound, who attended the hearing but did not enter an appearance. At the conclusion of the Government's presentation the Court delivered an oral opinion, reproduced in the Jurisdictional Statement at pp. 15-21, and ordered dismissal of the Government's petition. The result was that Greyhound was never a party to the proceeding in the District Court. This fact is ignored by the Government, which treats presence of attorneys in court as equivalent to their formal appearance (p. 7).

The rules of this Court provide that "all parties to the proceeding in the court from whose judgment the appeal is being taken shall be deemed parties in this court, * * *." (Rule 10) Because Greyhound was never a party below, it is uncertain as to its precise status here. Although it appears to be a non-party under the rules of this Court, it, in self-defense, is making a motion to affirm because the Government, in its so-called "jurisdictional statement" is making an unprecedented prayer for final relief against a stranger to the District Court proceedings.

Moreover, it is making the motion also because the actual questions raised by the Government's appeal, as distinguished from those asserted by the Government, are insubstantial.

Although this Court noted probable jurisdiction in the earlier appeal as to General Host (396 U. S. 811), we believe that such ruling is not a controlling precedent for entertaining the Government's appeal as to Greyhound for three reasons:

1. The Government's assumption that the Consent Decree enjoins Armour from engaging in the catering or restaurant business that Greyhound's subsidiaries are engaged in is unwarranted and without substance.

2. This Court has had the benefit of full briefing of the Government's position that the Packers' Consent Decree operates to enjoin persons engaged in businesses forbidden to the consenting packers from acquiring stock control of them, and is now fully cognizant of how insubstantial and unsupportable that position is.

3. In a proceeding against Ling-Temco-Vought in the Western District of Pennsylvania, the Government, even after General Host's brief was filed in this Court, interpreted the Decree exactly contrary to its present position.

I.

This Case Should Be Affirmed and Not Reviewed Because the Alleged Substantial Issue Which Supposedly Impairs All Structural Anti-Trust Decrees Is Nonexistent and the Justice Department in Its Own Interpretation of the Packers Decree Admits of the "Relationship" It Now Attacks.

Greyhound's acquisition of common stock of Armour creates a "relationship" identical to that approved by a Federal Court on motion of the Justice Department in the LTV litigation. The notion that the District Court in this case created a precedent for the circumvention of structural anti-trust decrees is palpably erroneous and unfair.

Armour is not violating the terms of the 1920 Decree. Greyhound is not conspiring or abetting Armour in some ruse by which the terms of the Decree are violated. Moreover, Greyhound has no plan to assist or put Armour in violation of the Decree. The Petition does not allege any

anti-trust act on which the extraordinary relief requested by the Government is predicated. The terms of the Decree are thus inviolate. The substantiality referred to by the Solicitor General in establishing the jurisdictional right to this appeal is that Greyhound, by acquiring more than 50% of the stock of Armour, places that packer in a "relationship" which circumvents the Decree and therefore creates a mechanism for avoiding all structural anti-trust decrees.

In short, the Government says that Armour is violating the Decree because subsidiaries of Greyhound are engaged in the restaurant or catering business. Ignored in this argument is that fact that the Justice Department solicited a Federal Court in Pittsburgh to accept the LTV-Wilson settlement which places Wilson & Co. in the same "relationship" or violation of the Decree.

LTV owns more than 80% of the common stock of Wilson & Co.; Greyhound owns more than 80% of the common stock of Armour. LTV not only owns Wilson & Co. but many other companies, including Jones & Laughlin, a steel processor and manufacturer. The Greyhound Corporation, in addition to owning the common stock of Armour, has other investments, including a catering service called Prophet Foods (see Exhibit A attached).

The analogy between the two situations is striking. Both Greyhound and LTV have a variety of businesses. Each has a substantial interest in a packer. Both companies own such properties through corporate subsidiaries—they are not divisions of the parent. Both Wilson and Armour were original parties and signators to the stipulation entered by agreement on which the Packers Decree was based. This Decree speaks of practices which are now historical anachronisms—the use by the meat packers of "public stockyards," "stockyard terminal railroads," "market news-

papers,'' ''packing houses'' and a distribution system based on ''branch house route cars and auto trucks.'' Each signator to this stipulated Decree promised not to process or distribute various food products and a variety of miscellaneous items. The unique provisions of this Decree foreclose Armour and Wilson from manufacturing such products as ''bumper posts,'' ''babbitts'' and ''fruit pitting equipment.'' The Decree, in unmistakably clear language, precludes each packer from manufacturing and distributing ''bar iron'' and ''structural steel,'' products handled in enormous quantities by Jones & Laughlin, a subsidiary of LTV.

The Government therefore agrees publicly and has solicited a Federal Court to accept a ''relationship'' in which a packer, Wilson & Co., is commonly owned by interests dealing in prohibited products.

It is manifestly implicit in the settlement in the Federal Court in Pittsburgh that the public interest is not affected by such a relationship and the Decree has not been violated. The suggestion now made to this Court that a substantial issue is involved when Greyhound acquires a packer and also owns another company which (it is argued) deals in Decree products is simply in error. The Solicitor General in the General Host appeal apologized for this inconsistency in a footnote suggesting that food products (Greyhound's catering subsidiary corporation) are to be treated differently from steel products in that food products have more competitive significance; but this Court does not have before it any issue regarding competition or product interchangeability or the competitive injury issues customarily tried in a Sherman Act or Section 7 case. Rather, the Court has before it only a decree which directly prohibits any packer from dealing in certain food products and other products, including structural steel.

The Government contends that its anti-trust Decree can

be circumvented by having a company invest in a packer if that company also through another subsidiary deals in Decree products. This is not an anti-trust issue as to whether or not food products are more or less important than steel products. It is inconceivable to Greyhound that the Government would solicit a Federal Court to accept a relationship in which Wilson was violating the Decree, using the Government's theory, and thereafter when another packer is acquired, plead to the Supreme Court that the relationship approved in LTV not establish a precedent for circumventing all structural anti-trust decrees.

Greyhound respectfully suggests that the District Court opinion in this case conclusively disposes of each argument advanced by the Government. The District Court is not a stranger to the Decree but rather is intimately familiar with its terms, since that District Court heard the extended trial when the signators sought modification of the Decree. The Supreme Court affirmed the District Court disposition of that modification proceeding without opinion. (376 U. S. 909)

As is fully considered *infra*, the District Court found that the Packers Decree does not run against the world and is not capable of the constrained purpose urged by the Solicitor General. Rather, applying settled principles of interpretation to a specific instrument or document, it is apparent that stockholders or "owners" of the various packers are not subject to the Decree. They could have been. They simply were not. It is the Government and not Greyhound that seeks to circumvent established principles.

The Government has accepted the relationship it now attacks through the LTV settlement but, as fully developed in the General Host brief filed in this Court in the last term, the Government has also permitted for many years ownership of a controlling interest in Armour by F. H. Prince &

Co., Inc., which also controlled the Union Stock Yard & Transit Co. The Decree expressly prohibits and requires immediate divestiture of any stockyard interest held by a packer. Nonetheless, for many years the Justice Department permitted a "relationship" to exist through a controlling owner involving in this instance not only food products but the stockyard itself.

This Court was advised in the General Host brief as follows:

> "Nor was the connection between Armour and the Union Stock Yard & Transit Co. solely one of joint ownership. In addition to being Chairman and Chief Executive Officer of Armour, Mr. Prince served as President and director of F. H. Prince & Co., Inc., which owned the stockyard company. James Donovan was a director and member of the executive committee which controlled the daily operations of Armour, as well as Chairman of the Union Stock Yard & Transit Co., vice-president and director of F. H. Prince & Co., Inc., and a co-trustee of the Frederick H. Prince trust. Charles Potter was a director and a member of the executive committee of both Armour and F. H. Prince & Co. and was president of the stockyard company (App. 129).
>
> It thus is not disputed that until General Host's exchange offer, the management of Armour owned, directly or indirectly, effective control of both Armour and certain public stockyard companies and restaurants, and that there was substantial interlocking of directorates.
>
> Paragraph Second of the decree prohibits the defendants . . . from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States. . . .(App. 29)

This paragraph was at least as important a part of

> the relief afforded by the consent decree as were the similarly-worded Paragraphs Fourth, Fifth and Eighth. The great concern of the complaint with the effects upon commerce of the control of stockyards by the packers and individuals associated with them is evident, for a substantial portion of the complaint was devoted to a description of how ownership of the stockyards permitted the packers to restrain trade in meat (App. 13-16; *see* pp. 3-4, *supra*)."

There is no difference in principles whatsoever between the common control or common ownership of the stockyards and Armour, on the one hand, and the common control and ownership of a catering service—Prophet Foods—and Armour, on the other hand. In each case analyzed—LTV–Greyhound—F. H. Prince & Co.—a packer was controlled or owned by a company that had another subsidiary which supposedly dealt in Decree products. The Government cannot now contend that one of these instances for the first time creates a means by which decrees can be circumvented.

We submit, that the Government's position is most unfair and inconsistent. Perhaps one of the reasons it wishes this case disposed of on the basis of its "jurisdictional statement" and its prior brief is to save itself from the embarrassment of having to explain to this Court how it can "interpret" the decree one way in the LTV case and then interpret it in an exactly opposite way in this case.*

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* An "explanation" was tendered by the Solicitor General (who, we assume, had nothing to do with, and may not even have been previously advised of, the LTV settlement) in a memorandum filed in this Court. He stated the LTV case was "irrelevant"; that the prohibition to which Greyhound pointed came under "miscellaneous articles" and did not involve the food prohibitions central to the decree (Both are in paragraph Fourth); that "The consistency of the proposed settlement with the meat packers' decree has not been expressly in issue in that case."

This is no "explanation" at all. With reference to the last-quoted sentence, we point out that consistency *is* being put in issue

Reasonable certainty about the scope of antitrust prohibitions is imperative for just enforcement of the antitrust laws. Recognizing that fact, the Department of Justice has resorted with increasing frequency to publicizing its interpretation of the antitrust laws in the form of guidelines upon which the public may rely.

Although such procedures are not followed where the Government enforces antitrust decrees, the same public awareness and reliance results. When the Government acts or declines to take action to enforce a specific decree in a particular situation, it has declared its interpretation and construction of that decree to the public. When LTV possessed a controlling interest in Wilson & Co. simultaneously with its control of Jones & Laughlin, the Government remained silent. No claim was asserted that the acquisition was subject to the Packers' Decree. To the informed public, the Government's acquiescence was tantamount to a public proclamation that the Packers' Decree does not operate in reverse to preclude the acquisition of a controlling interest in a company subject to its prohibitions. Moreover, the Government must have anticipated that others would rely upon its "declared" position.

The interpretation which the Government has given to a consent decree cannot lightly be abandoned. In *United States* v. *Atlantic Refining Co.*, 360 U. S. 19 (1959), the Government attempted to renounce its previous position, claiming for the first time that "the decree imposed limits it had not previously sought to enforce" (360 U. S. at 23). The Court rejected the new construction urged by the Government, ruling that it "cannot be reconciled with

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in this case. The remaining "explanations" add up to no more than an averment that if the Government feels that a provision in an injunctive decree is not too important, it will look the other way when it is being violated; but not if it regards another provision important enough to attain some end sufficient unto the Department.

the consistent reading given to the decree" by the parties, 360 U. S. at 22. Clearly, the interpretation which the parties have given to a consent decree by their actions is a strong indication of its meaning. See *Donohue* v. *Vosper*, 243 U. S. 59 (1917).

The importance of the parties' interpretation of a consent decree is based to some extent upon its unique nature as a judicially sanctioned and approved agreement which in the first instance has been reached by the parties. *Hart, Schaffner & Marx* v. *Alexander's Dept. Stores, Inc.*, 341 F. 2d 101 (2nd Cir. 1965); *Butler* v. *Denton*, 57 F. Supp. 656 (E. D. Okla. 1944); aff'd 150 F. 2d 687 (10th Cir. 1945); *United States* v. *Hartford-Empire Co.*, 1 F. R. D. 424 (N. D. Ohio, 1940). Being akin to a contract, the operation and effect of a consent judgment is determined by rules of construction applicable to contracts (49 C. J. S. *Judgments*, § 178). The practical interpretation placed upon an agreement by the parties is given great weight in construing its meaning (3 Corbin, *Contracts*, § 558). Similarly, the interpretations of a consent decree as evidenced by the actions of the parties is the clearest and best indication of the scope and effect of the decree.*

* The inexplicable zeal with which the Government interprets the decree one way in one case, and the other way in another, is illustrated by its complaint that General Host refused to postpone selling its Armour stock to Greyhound while the Government sought an injunction from Justice Marshall against such a sale (p. 5).

Greyhound takes exception to the implication of the statements of the Solicitor General that it acted wrongfully in closing the purchase of General Host's Armour stock immediately upon receipt of I. C. C. approval.

The contract under which Greyhound agreed to purchase the stock was entered into on October 27, 1969. A copy of this agreement was sent by Greyhound to the Department of Justice in a letter dated November 4, 1969, and in a letter dated November 24, 1969, the Department acknowledged its awareness of it.

In a letter by Greyhound to the Department of Justice dated February 27, 1970, Greyhound, through its General Counsel, advised:

"Because of the consummation of our agreement to purchase

Judical reluctance to permit unilateral abrogation of consent decrees finds a close analogy in statutory construction. The interpretation of a statute by a governmental body charged with its enforcement is entitled to great weight and will be followed unless clearly erroneous; *e.g.*, *FTC* v. *Texaco, Inc.*, 393 U. S. 223 (1968); *FTC* v. *Borden Co.*, 383 U. S. 637 (1966); *United States* v. *Zucca*, 351 U. S. 91 (1956); *United States* v. *Chicago, North Shore & M. R.R.*, 288 U. S. 1 (1933). Thus, an abrupt repudiation of established statutory construction by the governmental

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additional stock from General Host Corporation is the subject of various approvals it is impossible to predict when all approvals will be obtained so that we may complete the purchase. *However, I hasten to advise you that the Greyhound Corporation will close this transaction as soon as all approvals are obtained.*" (Italics added.)

The Department of Justice, in a memorandum filed with the Interstate Commerce Commission dated March 23, 1970, stated:

"Through its General Counsel Greyhound has advised us that it intends to consummate the transaction with General Host for Armour securities promptly upon receiving Commission approval."

The Solicitor General admitted in his memorandum filed in the General Host appeal that "Greyhound had previously advised a Department of Justice attorney that it would proceed to consummate the acquisition upon the receipt of I. C. C. authority" (p. 3).

We submit that if any criticism is in order that it should be directed at the Department of Justice. As noted above, the Department was placed on notice by Greyhound on November 4, 1969 that the contract had been signed. Greyhound further indicated in writing on February 27, 1970, after a government request for a 60 day delay, that it planned on closing this transaction as promptly as was legally possible. In addition to these written communications, counsel for Greyhound, on at least four other occasions informed counsel for the Department that he could not authorize a delay in closing the transaction in view of the fact that any delay would result in continuing economic harm to both Greyhound and Host, and would also serve to perpetuate Armour in a state of limbo where permanent management direction was lacking. In fact, counsel for Greyhound indicated to the Department that he would welcome court action to determine the legality of the Company's position. Notwithstanding these importunings, the Department did nothing.

body will be disregarded. *United States* v. *Leslie Salt Co.*, 350 U. S. 383 (1956). *Cf., New York C. & St. L. R.R.* v. *Frank,* 314 U. S. 360 (1941). In the *Leslie Salt* case, the Court expressed the prevalent opinion when it stated (350 U. S. at 396):

> "Against the Treasury's prior longstanding and consistent administrative interpretation its more recent *ad hoc* contention as to how the statute should be construed cannot stand."

We submit, the Government's inconsistent interpretations of the 1920 Packers' Decree merits the silent rebuke of a summary affirmance of the judgment below.

II.

The Jurisdictional Statement Ignores the Well-Considered District Court Opinion and Improperly Requests the Entry of the Ultimate Relief on a Non-Party Which Has Never Been Served With Summons, Appeared or Answered.

The unprecedented procedure advanced asks that The Greyhound Corporation, without substantive hearing, be found to be in violation of the terms of the 1920 decree after incidentally making it a party to that proceeding.

Apart from the question of the substantiality of the government's position and whether the District Court created anew some precedent for violating other decrees, the procedure suggested by the Solicitor General constitutes a violation of procedural due process.

The simple issue in this appeal—obfuscated in the exhaustive brief filed in the guise of a jurisdictional statement—is whether Greyhound should be made a party to the Packers' Consent Decree. The Jurisdictional Statement should be stricken. It fails to comply with this Court's

rules. Moreover, it requests that this Court grant plenary consideration and the "relief sought in the Petition." Presumably, the relief sought will be formally entered after incidentally ordering that Greyhound be made a party to the 1920 lawsuit. One case was cited to the District Court, *United States* v. *Bayer Co.*, 105 F. Supp. 955 and the related case of *General Aniline Film Corp.* v. *Bayer*, 305 N. Y. 479, 113 N. E. 2d 844. While summons issued in that case to bring in a non-party, that non-party was granted its day in court and permitted to litigate the merits of the original decree. The Justice Department's reliance on this case is ironical. If summons issues against Greyhound under the *Bayer* and *General Aniline* litigation, Greyhound will have the right to litigate the merits of the 1920 Decree. As the New York Court of Appeals stated, "if *General Aniline* were bound by the *Bayer* consent decree, this would be in contravention of established principles of Anglo-American jurisprudence by a judgment *in personam* in an action to which it was not a party and in which it had no opportunity to be heard." The Justice Department uses the *Bayer* case as authority for issuing a summons but is not willing to accept the consequences of that precedent and wants Greyhound bound without a hearing in contravention of established principles of Anglo-American jurisprudence.

No other authority was cited to the District Court. The Jurisdictional Statement has no authority to support it and not only prays that summons incidentally issue but more significantly asks the Court to enter the relief requested. Moreover, Greyhound is asked to analyze and comment on 400 pages of briefs and appendices incorporated by reference filed in this Court in the October 1969 term in the *General Host* matter.

Greyhound initially respectfully requests the Court to deny such procedural unfairness, and to permit Greyhound under the appropriate Rules of this Court to file an ap-

propriate brief at the appropriate time, assuming that the Supreme Court accepts this case.

Greyhound respectfully calls this Court's attention to the well-reasoned and articulate decision of the District Court denying the request to have summons issue. The district judge is not a stranger to the Packers Decree. Rather, that court is an expert on the Packers Decree and granted the relief requested by the Justice Department when the signators to the Decree, after a four-month trial, requested modification of its provisions. This District Court, more than any other, is intimately familiar with the terms of the Decree and its application. The court's well-reasoned decision should not be taken lightly and articulately sets forth the infirmities in the Government's position:

First. The Petition concedes that no relief need be granted against Armour in that Armour has in fact complied with the terms of the Decree. Moreover, no relief is requested against Greyhound for causing Armour to operate inconsistent with the terms of the Decree. Finally, Greyhound is not charged with a threatened anti-trust violation in the form of a restraint of trade or attempt to monopolize. In short, no relief is needed for any such threatened action or harm.

Second. The District Court noted that authority exists to prohibit a non-party from committing acts which assist, abet or conspire with a party to violate the Decree. *Regal Knitwear Co.* v. *N. L. R. B.*, 324 U. S. 9 (1945); *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d at 832; *Accord, United Pharmaceutical Corp.* v. *United States*, 306 F. 2d 515 (1st Cir. 1962); *Kean* v. *Hurley*, 179 F. 2d 888 (8th Cir. 1950). No such allegation has been made.

Third. The specific request to issue summons on a non-party was supported by one authority, the case of *United*

States v. *Bayer Co.*, 105 F. Supp. 955, 135 F. Supp. 65 (S. D. N. Y. 1952, 1955). The District Court summarily and properly disposed of that case by noting that "the summoned party [in the *Bayer* case] was *a party in interest to the original unlawful contracts,* and was directly seeking to compel the original defendants to perform the prohibited agreements." No such contention is made in this case.

Fourth: The need to bring Greyhound into the case and have summons issue against it is based upon a "purpose" observed by the Government in protecting the terms of the Decree. In essence, the District Court found that no such protection was needed because the plain language and mandate of the Decree was not violated and no express purpose such as that observed by the Justice Department could be elicited from the consent proceedings on which the Decree was predicated.

> "In the first instance, such a procedure would contradict the rule of strict construction of consent decrees. In addition, a 'purpose' approach is wholly inappropriate because it is the parties who have purposes: the government to secure some relief while conserving resources; the defendants to save money and time, avoid the prima facie evidence rule in private actions, and limit the risk of a more stringent remedy.
>
> It is impossible to see how a general scheme can be surmised from provisions which represent a compromise of the parties with respect to the most crucial matters in an anti-trust proceeding. And, as it has been observed, nowhere is such a compromise more evident than in the initial decree entered in this case. See Note, 'Flexibility and Finality in Anti-trust Consent Decrees,' 80 Harv. L. Rev. 1303, 1315 (1967)."

Greyhound respectfully suggests to this court the well-stated opinion of Judge Hoffman disposes of all

issues. Apart from these well-reasoned points set forth in the District Court's opinion, and assuming for the sake of argument that this Court orders that summons issue against Greyhound, then Greyhound should have its day in court and an opportunity to answer and appear and set forth its defenses. Under the *Bayer* case, Greyhound should have the right to litigate the merits of the original complaint on which the Decree was based. In any event, without anticipating the various defenses which Greyhound may choose to use, procedural due process requires that Greyhound have a hearing on the substantive questions charged if the Court orders that summons should issue.

III.

The Government Is Impermissibly Seeking to Modify the Swift Decree Without the Necessary Formal Modification Proceeding.

In the checkered history of the Packers Decree the Government, until now, has uniformly opposed any modification or change in the literal language of the Decree. The same District Court that dismissed the Petition at issue in this appeal accepted the Government's argument and imposed on the packers the obligation to accept those literal terms, since each packer voluntarily agreed to them.

The Government also voluntarily entered into the stipulation and Decree as a party to the 1920 settlement. Not one term in the Decree prohibits LTV, Greyhound or F. H. Prince & Co. from investing in other companies that deal in prohibited products. No mandate of the Decree prohibits such stockholder investments in other properties. The Government now seeks to extend the Decree beyond its literal terms and to enjoin a non-consenting party.

There is no more warrant for interpreting a consent

decree, or any kind of a decree, forbidding the doing of something not expressed in it, than there is in reading a statute prohibiting the doing of something not within its terms. And, with particular reference to the decree in question, no reasonable person would read it as "running backwards" to bind stockholders; no reasonable lawyer would advise a client that an injunction binds any person except those named in F. R. C. P. 65(d).*

Hence, the Government's claim that the rejection of its arguments "would seriously undermine the efficacy of the Government's many structural antitrust decrees" (p. 11), even if true, is no justification for giving the decree the Government's tortured readings.

As said by this Court in *United States* v. *Atlantic Refining Co.*, 360 U. S. 19, 23:

> "The Government contends that the interpretation it now offers would more nearly effectuate 'the basic purpose of the Elkins and Interstate Commerce Acts that carriers are to treat all shippers alike.' This may be true. But it does not warrant our substantially changing the terms of a decree to which the parties consented without any adjudication of the issues. And we agree with the District Court that accepting the Government's present interpretation would do just that. Cf. *Hughes* v. *United States*, 342 U. S. 353."

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* The remarks of the Court in *Berry* v. *Midtown Service Corporation*, 104 F. 2d 107, 111 (C. A. 2), are peculiarly responsive to the Government's contention that non-parties are bound, *viz.*: "Once we adopt the principle that an express order to one party carries implications of duties imposed upon the other, it would be difficult to set limits upon the doctrine."

IV.

The 1920 Packers Consent Decree Does Not Enjoin the Packers From Engaging in the Restaurant Business.

We now take up an issue not discussed in Judge Hoffman's opinion, namely, whether the 1920 Packers Decree enjoined the packers from engaging in the restaurant business. If it does not, the basic premise of the Government's argument against Greyhound collapses.

General Host's brief on the prior appeal does not discuss this issue because it concededly was engaged in food businesses forbidden to Armour. It was engaged in the manufacture and sale of numerous food products and operated numerous grocery stores. Greyhound has two subsidiaries engaged only in the catering or restaurant business. To perhaps oversimplify, but to make clear the wide difference between General Host and Greyhound: Greyhound operates no grocery business; it buys raw foodstuffs and sells prepared meals; its principal subsidiaries are engaged in the transportation business.*

Greyhound denies the Government's assumption (p. 10) that the Packers Decree was intended to enjoin the packers from engaging in the restaurant business.

The Government asserts that "Any suggestion that restaurants do not 'deal' in food within the meaning of the Decree is disproved by the clear *negative implications* of the Decree's exception for "restaurants' * * * primarily for the benefit of the [Packers'] employees" (p. 19, em-

* The petition alleges that three Greyhound subsidiaries operate restaurants, cafeterias, or eating establishments in specified kinds of establishments. Since all involve the preparation and service of "food" to the general public or limited segments thereof, for convenience, all such operations will be referred to as "restaurants." Of the three operations described, Greyhound has divested itself of one (Miami Cafeteria, Inc.), and another (Post Houses, Inc.) is incidental to its bus business.

phasis supplied). We will treat the "negative implication" contention in a moment. The notion that restaurants "*deal*" in foods within the meaning of the Decree is disproved by the express allegations of the complaint leading to the Decree. The complaint rightly classifies restaurants as "*consumers*" of, rather than "*dealers*" in, meats (G. H. App. 17). Surely the Department has no right to treat restaurant operators as "consumers" of food products in its basic complaint but as forbidden "dealers" in them in attempted supplemental proceedings in the same case. By no fantasy of logic can a "consumer" rightfully be converted into a "dealer."

Whether the Decree enjoins Armour from engaging in the general restaurant business is determined by the terms of the Decree itself and its purposes, interpreted in the light of the issues made by the complaint. Court orders are not to be interpreted as enjoining the doing of certain acts merely by "negative implications" that may be drawn from them. The fallacy of the Government's argument is even more apparent when the entire exception "(3)," upon which the Government relies, is read. Excepted are purchase, transportation or use of the prohibited items: "(3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees." Under the Government's "negative implication" argument the decree also prohibits the Packers from going into the laundry business—a business not even mentioned in the complaint. The only article used in laundries that the packers were prohibited from dealing in was the insignificant item of "bluing starch," which is listed under "Miscellaneous articles" in paragraph 13 (G. H. App. 33).

An injunction "shall be specific in terms" (F. R. C. P. 65(d)). This Court has expressly rejected any rule that the scope of an injunction is to be determined by the impli-

cations that may be drawn therefrom. In *Terminal R. R. Ass'n* v. *United States*, 266 U. S. 17, 29, it said:

> "In contempt proceedings for its enforcement, a decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree so read."*

As the District Court aptly observed, citing authorities, even as against consenting parties, "consent decrees are to be strictly construed" (p. 18). The only legitimate implication to be drawn from the provision which the Government relied upon is that it was inserted out of an abundance of caution. There is nothing in the history of the Packers' litigation, the Government's complaint, or the Decree itself, that shows that the Decree was ever intended to enjoin the Packers from engaging in a general restaurant business.

Our contention requires a further review of this historic 1920 Decree. The complaint on which the Decree was entered classified restaurants as "consumers" of food.**

The complaint further charged that the defendants, "having eliminated competition in the meat products," "next

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*The fact that this is not a contempt proceeding does not change the rule. Greyhound would be subject to contempt for failing to obey, after it was made a party to the decree, and after the meaningless "hearing" suggested by the Government.

** The purposes of the decree are also illuminated by an examination of the investigation from which the 1920 case and its simultaneous settlement arose. A reading of the Federal Trade Commission's exhaustive 1919 report on the meat packing industry clearly discloses that the decree was aimed at correcting what the government felt to be abuses by the packers solely in the fields of production and distribution of foodstuffs. The report was not concerned with the business of restaurant operation. "Report of the Federal Trade Commission on the Meat Packing Industry." Lib. Cong. No. HD 9416 .A5 1918a; *Swift & Co.* v. *United States*, 276 U. S. 311, 319 (1928).

took cognizance of the competition which might be expected from * * * substitute foods" (G. H. App. 21); that to prevent this the defendants set about controlling the Nation's supplies of "substitute foods *ordinarily handled by wholesale grocers or produce dealers*" (G. H. App. 21; Emphasis supplied).

It is clear from reading the Decree as a whole with reference to substitute foods that it was entered for the purpose of protecting competition and of preventing an alleged tendency toward monopoly in "substitute foods *ordinarily handled by wholesale grocers or produce dealers.*"

The purpose and scope of the 1920 Decree, as it related to prohibition against the packers dealing in "substitute food items" was discussed by Justice Cardozo in *United States* v. *Swift & Co.*, 286 U. S. 106, where this Court reversed a lower court modification of the decree that, *inter alia*, permitted Swift and Armour to deal in the items specified in paragraph Fourth. This Court said at p. 115:

> "The defendants, controlled by experienced business men, renounced the privilege of trading in groceries, whether in concert or independently, and did this with their eyes open. Two reasons, and only two, for exacting the surrender of this adjunct of the business were stated in the bill of complaint. Whatever persuasiveness the reasons then had, is theirs with undiminished force today.
>
> "The first was that through the ownership of refrigerator cars and branch houses as well as other facilities, the defendants were in a position to distribute substitute foods and other unrelated commodities with substantially no increase of overhead. There is no doubt that they are equally in that position now."

p. 116:

> "The second reason stated in the bill of complaint is the practice followed by the defendants of fixing prices for groceries so low over temporary periods of

time as to eliminate competition by rivals less favorably situated.

"Whether the defendants would resume that practice if they were to deal in groceries again, we do not know."

Language could not be more clear. The injunction forbade the packers from "dealing" in "groceries," either at the wholesale or retail level, in order to protect wholesalers or retailers therein from possible destructive competition.*

It is the height of economic unreality to suggest that Armour, by going into the restaurant business, would revive the evils that the 1920 Decree was intended to prevent. It is even more absurd to suggest that Greyhound's minor restaurant operations, which are but a miniscule part of the entire restaurant business in the nation, pose an anti-competitive threat to the nation's restaurant business simply because Greyhound now controls Armour. How the purposes of the 1920 Decree, or competition generally in the restaurant business, would be threatened or restrained by Greyhound's control of Armour is never suggested in the Government's brief.

Once the Decree is interpreted, as it must be, as a prohibition against the packers "dealing" or "trading" in groceries, it is obvious that it does not operate to enjoin them from engaging in the restaurant business. Neither within the language of the complaint, the intent of the Decree, nor in common parlance, is a restaurant operator regarded as a "dealer" or "trader" in the food he serves. *In re Wentworth Lunch Co.*, 159 Fed. 413, 415 (C. A. 2), aff'd 217 U. S. 591.

"A restaurant keeper is a caterer, who keeps a place for

* Judge Hoffman, in 189 F. Supp. 885, 909, also said: "The basic purpose was rather to divest the defendants of their grocery businesses, and to establish the grocery and meat operations as separate enterprises."

serving meals, and provides, prepares and cooks raw materials* to suit the tastes of its patrons." *In re Ah Yow,* 59 F. 561, 562 (D. C. Wash.).

The business of operating a restaurant partakes so much of service that many authorities hold (although there are some to the contrary) that the service of food in a restaurant does not constitute a sale thereof because service is the predominant element. *Merrill* v. *Hodson,* 88 Conn. 314, 91 A. 533; *O'Connor* v. *Smith,* 188 Va. 214, 49 S. E. 2d 310; *Child's Dining Hall* v. *Swingler,* 173 Md. 490, 197 A. 105; *Nisky* v. *Childs Co.,* 103 N. J. L. 464, 135 A. 805; *Consolidated Timber Co.* v. *Womack,* 132 F. 2d 101 (C. A. 9); *F. W. Woolworth Co.* v. *Wilson,* 74 F. 2d 439 (C. A. 5).

The proposition was succinctly stated in *Kenney* v. *Wong Len,* 81 N. H. 427, 128 A. 343, 348, where the Court said, "The business of innkeepers and restaurant keepers is regarded as of service only, and not of selling what is furnished."

In sum, the business of operating a restaurant is a business distinct and separate from that of a dealer in groceries.

We submit, that the Government's claim that the Packers Decree was intended to enjoin the Packers from engaging in the restaurant business is an attempt to modify it so as to include a business not embraced within it. The Courts have rejected the Government's attempt to modify consent decrees under the guise of construction. *Hughes* v. *United States,* 342 U. S. 353; *Liquid Carbonic Corp.* v. *United*

* Needless to say, a restaurant operator also furnishes his patrons some food items that are not cooked or otherwise changed from the form in which they have been purchased, such as, sugar, milk and cream. (The latter items are covered by paragraph 8 of the decree and referred to by the Government in footnote at p. 6.) The fact that a restaurant operator may furnish its patrons some items in a form unchanged from that in which they were purchased would not make him a "dealer" or "trader" in such items within the intent of the decree.

States, 350 U. S. 869, rev'g 121 F. Supp. 141, as modified, 123 F. Supp. 653 (D. C. N. Y.); *United States* v. *Continental Can Company,* 143 F. Supp. 787 (D. C. Cal.).

V.

If the Government is Entitled to Any Relief Under Its Petition the Nature of That Relief Should Be Initially Determined by the District Court.

The Government's petition prayed that Greyhound be required to divest itself of its Armour stock (p. 6). The prayer of its "jurisdictional statement" is that the judgment of the District Court should be reversed and the case remanded with instructions directing that Greyhound be made a party and that "the relief sought in the government's petition be granted" (p. 12).

Requesting final relief in a "jurisdictional statement" is not contemplated by the Rules; requesting it against one who was not even a party to the District Court proceedings appealed from is even more in violation of this Court's rules and in shocking defiance of elementary considerations of due process.

The Government nowhere attempts to show why, assuming that Greyhound's control of Armour "violates" the decree, divestiture of Greyhound's control of Armour is necessary or proper. Plainly, divestiture by Greyhound of some or all of its restaurant operations, claimed to be in violation of the decree, would fully satisfy what the Government contends that the Packers' Decree was intended to accomplish.

In the Solicitor General's "Memorandum in Opposition to Motion to Dismiss for Mootness an Application of the United States for Injunctive Relief *Pendente Lite*" filed in the General Host case, the Solicitor General recognized

that, even under the Government's interpretation of the decree, Greyhound's divestiture of its food interests would bring it in full compliance. Thus, at page 5 he stated:

> "We contend that if General Host can not own Armour, Greyhound also cannot, *unless it first disposes of certain of its other food interests.*"

And at page 8 the Solicitor General recognized, "of course, that Greyhound is entitled to a hearing as to any matters pertinent to the fashioning of a remedy."

If the Solicitor General's prayer in this proceeding is meant literally, he has shifted his position since the General Host appeal, and now requests relief in this Court that can only be characterized as punitive.

The only legitimate objective of this proceeding can be to prevent any present or threatened violation of the Packers' Decree. If Greyhound's control of Armour violates the decree because Greyhound is engaged in a food business forbidden to Armour, it should be for the District Court in the first instance, subject to this Court's review, to determine whether divestiture by Greyhound of its restaurant business is fully adequate to accomplish the purposes of the decree, as the Solicitor General admitted in the General Host appeal.

In *United States* v. *E. I. du Pont de Nemours & Co.*, 366 U. S. 316, at p. 322, this Court collected its numerous earlier decisions in which it emphasized the framing of antitrust decrees take place in the district courts and that such decrees will be upheld in the absence of a showing of abuse of discretion. Similarly, the District Court, in the first instance, should determine what relief should be granted the Government, if Greyhound's control of Armour violates the decree so long as some of its subsidiaries are engaged in the restaurant business.

CONCLUSION.

WHEREFORE, Greyhound respectfully prays that its motion to affirm be granted.

Respectfully submitted,

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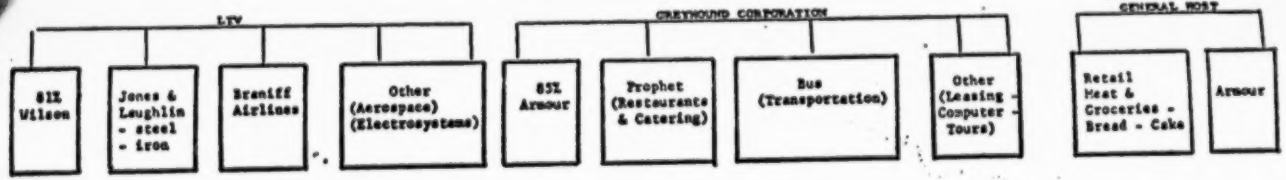

Total Sales	$3,750,000,000
Packer (Wilson)	1,286,000,000
Other Businesses	2,464,000,000
Decree Products (Iron and steel)	1,056,000,000
% of Decree Products to All Other Businesses Excluding Wilson	43%

Total Sales	$2,823,000,000
Packer (Armour)	2,153,000,000
Other Businesses	670,000,000
Decree Products (Restaurants)	124,000,000
% of Decree Products to All Other Businesses Excluding Armour	18%

Total Sales	$2,353,000,000
Packer (Armour)	2,153,000,000
Other Companies	200,000,000
Decree Products (Food Stores & Bread - Baking)	200,000,000
% of Decree Products To All Other Businesses Excluding Armour	100%

EXHIBIT A.

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 759

UNITED STATES OF AMERICA, APPELLANT

v.

ARMOUR & CO. AND GREYHOUND CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (App. 82–86) is not reported.

JURISDICTION

The order of the district court, dismissing the government's petition to make Greyhound Corporation a party and to issue an injunction against it (App. 88), was entered on June 30, 1970. The notice of appeal was filed July 31, 1970, and probable jurisdiction was noted on January 25, 1971 (App. 89). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *Armour*

& Co. and General Host Corporation, probable jurisdiction noted, 396 U.S. 811, judgment vacated and case remanded with instructions to dismiss as moot, 398 U.S. 268; *United States* v. *United Shoe Machinery Corp.,* 391 U.S. 244.

QUESTIONS PRESENTED

The Meat Packers Consent Decree of 1920 (App. 27-45) prohibits Armour & Co. (a party to the Decree) from dealing directly or indirectly in numerous specified products customarily used and sold in food service operations and restaurants, and from having any direct or indirect interest whatsoever in any corporation that deals in those products. Greyhound Corporation (not a party to the Decree) has subsidiaries engaged in the food service and restaurant businesses. The questions presented are:

1. Whether Greyhound's acquisition of Armour created a relationship between Greyhound's subsidiary Armour and Greyhound's food service and restaurant subsidiaries that is prohibited by the Decree.

2. If so, whether the district court should have made Greyhound a party to the continuing decree proceedings and, after a hearing, should have issued an order supplemental to the decree requiring termination of the prohibited relationship.

STATUTES INVOLVED

Section 5 of the Sherman Act, 15 U.S.C. 5, provides:

> Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice

require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

The All Writs Act, 28 U.S.C. 1651, provides in pertinent part:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

This appeal continues the controversy, interrupted a year ago, whether the 1920 Meat Packers Decree can prevent a corporation that under the Decree could not be acquired by Armour from itself acquiring Armour. The issue was before the Court last Term on the government's challenge to General Host Corporation's acquisition of Armour, but the Court held it moot after General Host abruptly transferred its Armour stock to Greyhound Corporation, the present appellee. *United States* v. *Armour & Co. and General Host Corporation,* 398 U.S. 268. Since Greyhound, like General Host, has food interests forbidden to Armour under the Decree, the government promptly asked the district court for the same relief against Greyhound that it had sought against General Host, and the district court again denied relief. This appeal presents the same legal questions that were before the Court last Term.

A. THE MEAT PACKERS DECREE

The Decree underlying this litigation was entered on February 27, 1920, in settlement of a civil antitrust suit brought by the government against Swift & Co., Armour & Co., Wilson & Co., Inc., Cudahy Packing Co. and Morris & Co. (which was subsequently acquired by Armour). The government's bill in equity, which followed a comprehensive Federal Trade Commission investigation of the meat packing industry,[1] charged that the defendants and some 80 other associated corporations and individuals were attempting to monopolize a substantial part of the nation's food supply and to extend the monopoly by various means.[2] The stated purpose of the suit was to end the monopoly and deprive the defendants of the instrumentalities by which it was being achieved. See *Swift & Co.* v. *United States,* 276 U.S. 311, 319 (hereinafter, *Swift I*).

The bill alleged that, by reason of their size and predatory practices, the five largest meat packing companies had acquired control of the "supply and the price of the food supplies of the Nation" in violation of the Sherman and Clayton Acts (App. 10).

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[1] *F.T.C. Food Investigation: Report on the Meat Packing Industry, 1919.* The Report was part of a series of proceedings and investigations concerning collusive monopolization of the food industry by the leading packers. See *Swift & Co.* v. *United States,* 276 U.S. 311, 319, n. 1.

[2] The bill was filed in the District of Columbia. In 1958, in proceedings for modification of the decree, the case was transferred under 28 U.S.C. 1404(a) to the Northern District of Illinois. *United States* v. *Swift & Company,* 158 F. Supp. 551 (D.D.C.).

Specifically, the bill charged that the defendants had gained control of the nation's dominant stockyard facilities, the terminal railroads connecting the yards with long-haul rail lines, and the trade newspapers and market journals, and had developed vast national systems of meat distribution (App. 11–19). The defendants had used these controlled facilities and the power that came from their great size to eliminate their competitors as significant factors in the marketing of livestock and, in order to eliminate competition among themselves, had entered into percentage purchasing arrangements allocating shares of the total supply offered at the various stockyards (App. 19–20). The bill further charged that, having destroyed competition in meats, the defendants also sought to gain control of other food supplies that might be substituted for meat. That objective was pursued through acquisitions of non-meat food companies and exclusive output contracts with others. In marketing these "substitute" products the defendants utilized their existing distributive facilities at virtually no increase in overhead or operating expenses (App. 20–21).

The government's bill expressed special concern with the increasing economic power of the packer defendants arising out of their interests and those of their officers, directors and principal stockholders in some 672 corporations engaged in a variety of businesses relating to meat and substitute foods. "Of the corporations which have been acquired by the parent companies in recent years, a large number are concerns manufacturing or selling these substitute foods

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or unrelated commodities" (App. 22–24). The prayer for relief sought, *inter alia,* divestiture of most of the incidental non-packing operations, prohibition of use of the packers' distributive facilities for substitute foods, and permanent exclusion of the defendants from the substitute food lines (App. 24–26).

The decree agreed to by the parties and subsequently approved by the court granted in general the relief sought in the government's bill, with relatively limited reflections of compromise.[3] By way of "behavioral" remedy the decree enjoined the defendants from further combinations and conspiracies in restraint of trade and illegal trade practices (App. 28–29, 37). The great bulk of the decree, however, was devoted to an elaboration of "structural" prohibitions calculated to exclude the defendants perpetually from a wide variety of food lines other than meat packing, as well as from various activities incidental to the distribution of meats and substitute foods. Paragraph Fourth provided

> That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (ex-

[3] See *United States* v. *Swift & Co.*, 286 U.S. 106, 111; *United States* v. *Swift & Co.*, 189 F. Supp. 885, 892 (N.D. Ill.), affirmed, 367 U.S. 909.

cept as common carriers), distributing, or otherwise dealing in [114 specified food products (principally fish, vegetables, fruit, groceries and bakery products) and 30 other products] except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat * * *. [App. 30.]

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities. [App. 33.]

Similar prohibitions were established with respect to fresh milk and cream (paragraph Eighth, App. 36–37), and the packers were further prohibited from owning, operating or conducting, directly or indirectly, any retail meat markets (Paragraph Sixth, App.

35–36). Paragraph Third forbade use of the packers' "distributive system and facilities" in the forbidden food lines (App. 29–30). In sum, a complete and continuing separation was decreed between the meat packer defendants and the general food business including meat retailing.[4]

Paragraph Eighteenth of the decree provided that the court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree" (App. 42).

The basic validity of the consent decree was soon challenged, unsuccessfully, by Armour and the other defendants (*Swift I, supra;* see, also, *United States* v. *California Cooperative Canneries,* 279 U.S. 553). In 1930, Armour and the other packer defendants, claiming that their power had declined and that conditions in the food business had changed, sought to have the decree modified so as to relieve them from the structural bars against engaging in various aspects of the general food and retail meat businesses. This Court rejected their effort in *United States* v. *Swift & Co.,* 286 U.S. 106 (hereinafter *Swift II*). The packer de-

[4] In contrast to the corporate defendants, the individual stockholder defendants, however, were enjoined only from holding an interest of 50 percent or more in firms engaged in the forbidden lines of commerce (Paragraph Fifth, App. 33–35).

fendants again sought similar relief on similar grounds in 1956; after an elaborate factual reexamination of the decree's purpose and of the nation's food industry as then structured, the district court in 1960 refused to modify the decree and this Court summarily affirmed. *United States* v. *Swift & Co.*, 189 F. Supp. 885 (N.D. Ill.), affirmed, 367 U.S. 909 (hereinafter *Swift III*).

B. THE PRESENT LITIGATION AND ITS ORIGINS

Armour is currently the second largest meat packer in the United States, with total assets of more than $600 million and total sales in 1969 of approximately $2.15 billion. In addition to meat packing, Armour has diversified into the manufacture, processing, and sale of various non-prohibited products, such as dairy products, soaps and household cleaners, industrial chemicals, pharmaceuticals, construction equipment, heavy machinery and industrial equipment (Moody's *Industrial Manual*, 1970, pp. 2676–2681).[5]

[5] The nation's leading meat packers rank as follows (based on *Moody's Industrial Manual*):

	Total assets	*1969 sales*
Swift	$744,059,000	$3,107,600,000
Armour	607,224,000	2,153,357,000
Wilson	226,989,000	1,285,514,000
John Morrell & Co. (a subsidiary of AMK Corp., which engages in a number of other businesses; sales figure is for 1968, the last year for which separate information on Morrell is available).		812,114,300
Iowa Beef Processers, Inc.	94,378,000	675,068,000
Geo. A. Hormel & Co.	115,787,624	626,017,304
Oscar Mayer & Co., Inc.	141,776,454	566,045,750
Hygrade Food Products Corp.	58,951,211	359,828,930
Cudahy	72,829,767	353,968,508

These figures are not completely comparable since some of the companies (including Armour) have substantial non-meat-packing lines, but we believe they provide a rough basis for ranking the packers.

Early in 1969, General Host Corporation made known its intention to acquire control of Armour. On January 20, 1969, the government filed a petition seeking a supplemental order to forbid General Host from gaining control of Armour because of General Host's operation of food businesses forbidden to Armour under the Meat Packers Decree. On January 30, 1969, the district court denied the petition, ruling that while the decree prohibits Armour from holding any interest in a company handling any of the prohibited products, it does not prohibit such a company from taking over Armour (see Brief for the United States in No. 103, 1969 Term, 7–10).

The government appealed and this Court noted probable jurisdiction on October 13, 1969. The case was then briefed on the merits and argued orally on March 5, 1970.

Meanwhile, General Host had entered into an agreement to sell its controlling stock interest in Armour to Greyhound. Because Greyhound was a regulated motor carrier, it needed Interstate Commerce Commission approval for the acquisition. The Department of Justice had advised Greyhound and General Host on November 24, 1969, that—because Greyhound was also engaged in food businesses prohibited to Armour under the decree—it considered Greyhound's potential ownership of Armour just as inconsistent with the decree as General Host's ownership (App. 58). The Department expressed this same position in a paper filed with the Interstate Commerce Commission and accordingly urged the Commission to defer action on

Greyhound's application until this Court's decision. The Commission declined, however, to do so and granted the application on the afternoon of May 14, 1970 (*The Greyhound Corporation Securities,* Order dated May 14, 1970, served May 15, 1970, I.C.C. Fin. Dkt. No. 26056). The transfer of the stock to Greyhound was consummated early that same evening.[6] General Host submitted a suggestion of mootness, the government opposed and Greyhound submitted a memorandum urging the court to affirm.[7] On June 1, 1970, this Court vacated the judgment below and directed the district court to dismiss the petition against General Host as moot, Mr. Justice Douglas dissenting, 398 U.S. 268.

On June 18, 1970, the government filed a new petition in the district court alleging (as it had against General Host) that Greyhound is engaged in businesses forbidden to Armour or any firm in which Armour has any direct or indirect interest, and that Greyhound's ownership of Armour therefore creates a corporate relationship forbidden by the Meat Pack-

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[6] At the time of the consummation, the United States was about to apply to Mr. Justice Marshall, at his home, for a temporary injunction against such consummation. The government had previously informed General Host's counsel of its intention to seek such relief and had requested that the transaction be deferred for 24 hours to permit the filing and determination of the application; General Host's counsel forwarded the request to the parties in Chicago, where the closing took place, but they refused the postponement.

[7] These materials are set forth in the Supplemental Appendix; they describe the events of May 1970 in somewhat greater detail.

ers Decree. The petition (virtually identical with that in *General Host*) asked that Greyhound be brought before the court under Section 5 of the Sherman Act and that an order supplemental to the decree be entered enjoining Greyhound from acquiring any additional stock or acting to exercise control over or influence the business affairs of Armour, and requiring Greyhound to divest itself of the Armour stock (App. 51).

The affidavit supporting the government's petition showed that Greyhound deals in food products covered by the decree through its divisions and wholly-owned subsidiaries, which provide industrial catering services and operate restaurants, cafeterias and other eating facilities in commercial plants, bus stations and elsewhere; and that in 1969 Greyhound had revenues of about $124 million from food operations, which accounted for more than 16 percent of its total revenues of $688 million.[8] Greyhound filed no response to

[8] The uncontradicted affidavit stated:

> The Greyhound Corporation, through its divisions and wholly-owned subsidiaries, is engaged in the business of jobbing, selling, distributing, or otherwise dealing in products or commodities listed in the consent decree. Its subsidiary, Prophet Foods Company, is engaged in industrial catering. It operates eating facilities in industrial plants, schools, hospitals, nursing homes, and other commercial establishments. In 1968 it had sales in excess of $77 million. Through Post Houses, Inc., Greyhound operates restaurants in its bus stations and at rest and meal stop locations. Post Houses had sales in excess of $33 million in 1968. Greyhound's Miami Cafeterias, Inc., operates a small chain of cafeterias in Florida and Georgia, with sales of more than

the government's petition, but it was represented by counsel who was permitted to argue off-the-record at the hearing thereon (See App. 78).[9]

The district court dismissed the government's petition on the ground that it failed to state a claim on which relief could be granted (App. 86), giving essentially the same reasons that the same judge had given earlier in denying relief against General Host. Since Greyhound itself is not a party to the original decree and is not charged with assisting or causing Armour to do any forbidden act, the court held, it is not "bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree" (App. 84). In disposing of the government's contention that by acquiring Armour stock, Greyhound has placed Armour in a "corporate relationship" with a company that deals in prohibited food items, the court held that:

> the decree does not speak in terms of corporate relationships; it speaks in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by the party to the decree. [App. 84.]

$3 million in 1968. In 1969 Greyhound's food operations had revenues of $123.8 million and accounted for over 16% of its total revenues.

We are informed that Greyhound has since sold Miami Cafeterias (See Motion to Affirm p. 18, footnote).

[9] The district court denied the government's request that the argument on behalf of Greyhound be on the record.

A consent decree, the court ruled, has no "purpose" that can be "the basis for an extension of its terms to a situation not expressly covered thereby" (App. 85).

* * * * *

We call the Court's attention to certain undisputed further developments in Greyhound's relationship with Armour. The transaction with General Host gave Greyhound about 86 per cent of Armour's stock, and Greyhound shortly made known its intention to acquire the remaining stock (App. 58); we are informed that Greyhound now in fact holds 100 per cent of the Armour stock through its wholly owned subsidiary Greyhound Food Management, Inc. Greyhound controls the Armour Board of Directors, and Greyhound's Chairman and Vice President (Food) are the Chairman and Vice-Chairman, respectively, of Armour. Greyhound has sold certain of the Armour subsidiaries to third parties.

SUMMARY OF ARGUMENT

The Meat Packers Decree of 1920, which retains both its legal force and its economic foundation today, perpetually bars Armour from dealing directly or indirectly in the food lines specified in the Decree and from having any interest whatsoever in any company that deals in those lines. Greyhound, which has made Armour its wholly owned subsidiary, has other subsidiaries that deal directly in the forbidden food lines in their extensive retail food service and restaurant operations; there is no substance to the sugges-

tion that such operations do not "deal in" the foods within the meaning of the decree, as is shown *inter alia* by the necessity of a special exception in Paragraph Fourth allowing the packers to operate restaurants for their employees. Thus, it is clear that Armour would be forbidden to acquire any interest in Greyhound or its food subsidiaries.

When one of the defendant meat packers enters an ownership relation with a firm which buys meat for sale to consumers, or which is substantially engaged in the prohibited food lines, then regardless of the form the transaction takes, the separation intended by the Decree is destroyed. It is immaterial whether a defendant itself engages in a prohibited business, acquires an interest in a firm in that business, consents to its own acquisition by such a firm, or is acquired by such a firm against its will by a successful tender or exchange offer to its stockholders. Indeed, Armour's relationship to its sister food subsidiaries of Greyhound is identical with the relationship that would have resulted from Armour's own acquisition of control through the conventional creation of a holding company, something that would plainly violate the Decree. And Armour and the other subsidiaries have interlocking directorates and managements as well as common ownership. Putting remedial problems to one side for the moment, it is plain that this kind of corporate relationship gives Armour an "interest" in the business of its sisters within the literal language of the decree as well as in economic reality. The packers' lack of success in having the

Decree modified over the years reflects what is clear on its face—that the Decree's purpose is principally structural rather than behavioral. Thus, interference with the Decree is properly assessed in terms of objective relationships, not in terms of cause or motive or the innocence of those who happen to be owners or managers at a particular time of guilt under the antitrust laws. And in such objective terms Greyhound's acquisition of Armour tends to defeat the Decree just as much as Armour's acquisition of Greyhound would.

Traditional equitable principles give a court ample power to protect its decree from such interference, obstruction or frustration by a non-party. After appropriate notice and hearing to determine whether a non-party is undermining its injunction, a court can issue a supplemental order against him restraining such interference, as the federal courts have done, for example, in school desegregation cases. The power of the district courts to protect the integrity of their decrees in this manner derives from the inherent nature of their equitable jurisdiction, from the All Writs Act, 28 U.S.C. 1651(a), and, in antitrust cases, from the specific provision of Section 5 of the Sherman Act giving jurisdiction to bring additional parties before the court where the ends of justice so require. Our position is not that the decree should be read or modified to run against the world, to subject persons not named as parties to punishment for contempt. On the contrary, the government's petition requested the district court to bring Greyhound

before it for a hearing and adjudication whether Greyhound's ownership of Armour interferes with or violates the decree; then and only then would the district court frame an appropriate order that would be binding on Greyhound *in personam*.

To say that the court could not remedy such a situation, is to treat a structural antitrust decree as nothing more than a means for preventing the particular wrongdoers originally brought before the court from repeating their misconduct, without any force to prevent third persons from recreating precisely the business relationship that the decree was designed to eliminate and specifically forbids. Such a principle would seriously undermine the efficacy of the government's many structural antitrust decrees, whose very reason for existence is to prevent anticompetitive business relationships from coming into existence without the need for *de novo* proof of wrongdoing or harm.

ARGUMENT

I. THE STRUCTURAL TERMS OF THE MEAT PACKERS DECREE PROHIBIT ARMOUR FROM HAVING ANY INTEREST WHATSOEVER IN GREYHOUND'S FOOD OPERATIONS.

The structural remedies that make up the bulk of the Meat Packers Decree specifically preclude Armour and the other packer defendants, perpetually, from "directly or indirectly * * * engaging in" the forbidden food lines and from having "directly or indirectly * * * any capital stock or other interest whatsoever" in any company in the forbidden business.

The unmistakeable premise of the structural restrictions was that the great size and economic power of the defendant packers gives them enormous competitive leverage in the production and distribution of all kinds of food supplies throughout the nation. The Decree was thus intended both to restore competition in the meat industry by separating packing from retailing and to eliminate the threats to competition in the production, wholesaling and retailing of all kinds of food products that were presented by the intrusion of the packers' power into the various levels of the general food business.

More than a decade of litigation was required before this structural relief became operative (see *Swift III*, 189 F. Supp. at 893, 898), and the exclusion of the meat packers from the forbidden food lines has been maintained over three successive challenges—one by a non-party which sought to intervene for this purpose (*United States* v. *California Cooperative Canneries*, 279 U.S. 553) and two by the corporate defendants themselves (*Swift II*, 286 U.S. 106, *Swift III*, 189 F. Supp. 885, affirmed, 367 U.S. 909). Only ten years ago, in *Swift III*, this Court considered the decree once again and sustained the judgment court's refusal to lower the structural barrier. 367 U.S. 909.

The Decree's clear purposes and its continuing vitality have been articulated in the opinions of this Court and the judgment court considering it over the years. Thus, in 1932 this Court rejected the packers' contention that the structural prohibitions on general food dealings and meat retailing were no longer needed

because of the restoration of competition among the packers and changes in the food business, explaining the situation as follows (*Swift II*, 286 U.S. at 116-117):

> Whether the defendants would resume [their predatory practices] if they were to deal in groceries again, we do not know. They would certainly have the temptation to resume it. Their low overhead and their gigantic size, even when they are viewed as separate units, would still put them in a position to starve out weaker rivals. Mere size, according to the holding of this court, is not an offense against the Sherman Act unless magnified to the point at which it amounts to a monopoly [citations omitted] but size carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past. The original decree at all events was framed upon that theory. It was framed upon the theory that even after the combination among the packers had been broken up and the monopoly dissolved, the individual units would be so huge that the capacity to engage in other forms of business as adjuncts to the sale of meats should be taken from them altogether. * * * To curb the aggressions of the huge units that would remain, there was to be a check upon their power, even though acting independently, to wage a war of extermination against dealers weaker than themselves. * * * Groceries and other enumerated articles they were not to sell at all, either by wholesale or by retail. Even the things that they were free to sell, meats and meat products, they were not to sell by retail.

In 1961, this Court summarily affirmed the judgment court's refusal, after extended hearings, to relax these structural limits. 367 U.S. 909. The judgment court rejected the packers' contention that "[m]odification now is warranted * * * since the individual officers who formerly controlled company policies are no longer in power, and since the defendants have remained law-abiding for a substantial period of time." *Swift III,* 189 F.Supp. at 909. It concluded that "The separation, once complete, was to continue. So long as the power endures, therefore, the divestiture must be maintained * * *." *Ibid.*

Armour remains today the second largest firm in the meat packing industry, which continues to be dominated by a relatively few large firms.[10] The economic importance of such a giant meat packer is shown by the fact that meat represents about one-fourth of all consumer expenditures for food.[11] Thus, the structural restrictions of the Meat Packers Decree are no mere historical remnant, but rather constitute an important bulwark of competition in the food

[10] Despite a definite trend toward decentralization in U.S. commercial meat production, the Food Marketing Commission reported that in 1964 the top four firms accounted for 28.7% of the market, and the top eight, 37.1%. *Organization and Competition in the Livestock and Meat Industry*, Tech. Study No. 1, National Commission on Food Marketing (1966), p. 9 (hereinafter, "Food Marketing Study"). The three largest firms (Swift, Armour and Wilson) are parties to the present Decree.

[11] Food Marketing Study, p. 1.

industry.[12] And those restrictions continue to exclude Armour from any connection, *inter alia,* with the retailing of either meats or the 114 prohibited food products enumerated in the Decree.

As we have noted (p. 12, *supra*), Greyhound's two present food subsidiaries other than Armour, Prophet Foods and Post Houses, have extensive retail food service and restaurant operations. Greyhound's food operations produced 1969 revenues of almost $124 million, representing more than sixteen percent of Greyhound's total revenues.[13] These food subsidiaries sell in prepared form a great many of the forbidden food products enumerated in Paragraph Fourth of the Decree, including fish, vegetables, fruit, soft drinks, condiments, coffee, tea, chocolate, cocoa, nuts,

[12] Because of the continuing nature of this decree, the Department re-examines it periodically in the light of changing conditions in the economy. Cf. *White House Task Force Report on Antitrust Policy*, 115 Cong. Rec. S5642, S5648–5649 (daily ed. May 27, 1969); *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955), p. 366. The Department currently has under consideration a request by one of the packer defendants other than Armour that it support a proposal to modify the decree so as to permit entry into certain product lines presently prohibited by the decree. Although this matter has not been finally resolved, the Department has concluded that, in light of contemporary conditions, it will not consent to any proposed modification that would permit the packers to enter any form of meat or general food retailing.

[13] These revenues did not, of course, yet include Armour. In addition to Prophet Foods and Post Houses they did presumably include the relatively small operations of Miami Cafeterias, Inc. ($3 million sales in 1968), which Greyhound has subsequently sold. See p. 12, n. 8, *supra*.

bakery products and cereals, as well as fresh milk and cream (forbidden under Paragraph Eighth) and meat (the retailing of which is forbidden under Paragraph Sixth). Thus, Armour is strictly prohibited under the decree from dealing in the food lines in which these two large Greyhound subsidiaries are engaged, and Armour cannot acquire these companies or have "any interest whatsoever" in them.

There is no substance to Greyhound's contention (advanced in its Motion to Affirm at pp. 18–24, but not considered by the district court) that the Decree's prohibition on "directly or indirectly * * * selling, * * * distributing, or otherwise dealing in" the forbidden foods somehow excludes the kind of selling, distributing and otherwise dealing in them that is carried on by industrial food service and restaurant operations. That there is no exception for prepared food is underlined by the specific exception in Paragraph Fourth permitting the packers to operate "restaurants * * * primarily for the benefit of their employees"; such an exception would obviously not be necessary if all restaurants were excluded from the general language of the prohibition. Certainly a major food service and restaurant operation that purchases large quantities of the products enumerated in the Decree for preparation and retail sale must be said to "deal in" those commodities as that term is normally construed. The fact that some (but not all) courts have concluded that retail food service does not constitute a "sale" at common law so as to

give rise to implied warranty protections (*Id.*, p. 23), plainly is not controlling on the issue whether retail food service operations are a commercial activity forbidden under a specific antitrust decree. Medieval concepts of innkeepers' "utterances" of meals are not controlling in an era of great restaurant chains and industrial catering operations characterized by centralized purchasing and mass merchandising.

The potential for competitive mischief that would inhere in the combination of meat packing with retail meat, dairy and other food operations inheres equally in the combination of a meat packer with a large retail food service operation such as Greyhound's. In the commercial meat industry there is a substantial imbalance between the bargaining power of sellers and large buyers. Meat is normally in abundant supply, thus disadvantaging sellers, and "bargaining strength is enhanced by being positioned in the marketing channel closest to consumers." Food Marketing Study, p. 49. Large, strategically positioned buyers are able to exact substantial concessions from sellers, and "[c]oncessions to powerful meat buyers which are unjustified by cost savings impair free and open competition. Less powerful buyers pay higher prices than justified by cost. In addition, such practices handicap alternative sellers in competing freely and openly on the basis of price, quality, or service." *Id.* at 54. In 1963 approximately 35 percent of all red meat consumed was consumed away from home (Food Marketing Study, p. 43). Competitive relations in this large segment of the market are as important as distribution

to outlets for home consumption. A food service operation as large as Greyhound's with its extensive network of restaurants and large industrial catering services, is an enormous buyer of meat products.[14] The combination of a packer with such a large buyer creates a substantial risk of unjustified price concessions, foreclosure of other sellers by intra-corporate preference for products of a sister subsidiary, and similar threats to competition in the meat industry. In addition, it links the packing firm with a large scale retail operation dealing in a wide range of other food products covered by the Decree. Thus the competitive dangers the Decree was intended to forestall are potentially present in a combination of Armour with a retail food operation like Greyhound's as they would be in a combination with a large grocery chain. The Decree is intended to relieve the government from the necessity for awaiting and "ferreting out" such anticompetitive activities by establishing a structural barrier that will keep them from arising (*Swift II*, 286 U.S. at 118–119.)

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[14] 1969 figures are reflected in a soon-to-be published survey conducted by the Economic Research Service of the Department of Agriculture. The data, now available to the public, show that total civilian sales at retail of food consumed away from home (including alcoholic beverages) were $26 billion. Of this figure, red meat (beef, pork, lamb, and veal) accounted for $10.7 billion or 41.1 percent. Turkey and chicken account for an additional $1.5 billion, raising the total to 47 percent.

II. GREYHOUND'S ACQUISITION OF ARMOUR HAS GIVEN ARMOUR A PROHIBITED INTEREST IN GREYHOUND'S OTHER FOOD SUBSIDIARIES, CREATING A RELATIONSHIP THAT DEFEATS THE EFFECTIVENESS OF THE DECREE

We have shown that the Meat Packers Decree absolutely forbids Armour to have "any interest whatsoever" in Greyhound's other food subsidiaries or to deal in any way in their products. It is plain, therefore, that Armour could not have acquired any stock either in Greyhound or in Greyhound's other food subsidiaries. By the same token, there can be little doubt that Armour was forbidden to form a holding company which, owning all of the Armour stock, then acquired Greyhound's food subsidiaries; even though there is no express provision in the decree (or in F.R. Civ. P. 65(d)) making the structural restrictions applicable to "successors and assigns", it seems evident that this kind of manipulation of corporate structures would not avoid the effect of the Decree. Nor, similarly, could Armour have acquired another operating company, made itself a wholly owned subsidiary of that company, and then had the new parent company acquire the food subsidiaries. But the result of this last series of maneuvers would be exactly the result that now prevails by reason of Greyhound's making Armour a wholly owned subsidiary while retaining its food subsidiaries. There is no structural or economic difference whatever arising out of the fact that

Armour as a corporate entity was passive rather than active in the financial and legal transactions that have occurred. As we have indicated, the common ownership of Armour and the other food subsidiaries is implemented by interlocking managements and boards of directors, all of which are under the parental control of a Greyhound management that is necessarily committed to making the most efficient use of all subsidiaries for the maximum financial benefit to Greyhound's stockholders.

In short—saving for the next section the question of remedy—we think it indisputable that Armour now has an "interest" in its sister subsidiaries of Greyhound that are engaged in forbidden food lines; the relationship is so close, moreover, that Armour cannot realistically be said not to be "dealing in" the products in which those other branches of the same enterprise deal. And of course the economic dangers of common ownership of the meat packing and general food businesses are unaffected by the fact that it was Greyhound's management (the present management of Armour) rather than Armour's former management that engineered it. In short, the situation that now prevails has broken down the separation decreed by the structural provisions of the Meat Packers Decree.

The essence of the district court's holding that the government's petition failed to state a claim was its view that

> [T]he decree does not speak in terms of corporate relationships; it speaks in terms of the

defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree. [App. 84.]

Putting to one side our argument that the relationship between Armour and its sisters is so close that both "deal in" the same lines, the district court's holding is based on a literally incorrect reading of the Decree. It ignores the provisions expressly prohibiting any Armour "interest whatsoever" in a company in a forbidden line. And of course the "interest" language can refer only to the kind of corporate "relationships" that the district court said were not mentioned in the decree.

Under the district court's ruling, should Greyhound decide to dispose of its interest in Armour, as did General Host, it could sell to yet another company engaged in the food business. Such a firm would, indeed, be a most likely purchaser. Control of Armour could pass, for example, to one of the great supermarket chains such as A & P, Safeway or Kroger, so long as the form of the transaction was a bare stock transfer. Yet Armour would be in contempt if it acquired any interest in the same food chain, or, as a corporation, consented to its acquisition by such a firm. As another example, although Swift & Co., one of the defendants, was required by the decree to divest itself of any interest in Libby, McNeil and Libby, a leading canner, Libby could, under the district court's ruling, have turned around and restored the relationship by acquiring control of Swift. Such an approach

elevates form over substance to the point of totally defeating the effectiveness of the Decree.

The district court's holding that the relationship between Armour and its sisters is not inconsistent with the decree is based fundamentally upon its reading of the decree as a purely "behavioral" document and a failure to recognize in this context that the court in 1920 had also, and indeed primarily, decreed prophylactic *structural* relief designed to prevent the forbidden situations from coming into being without regard to actual misbehavior. This is a somewhat strange approach in light of the same court's express recognition in the modification context ten years ago that the passing of the individuals who had brought on the antitrust litigation in 1920 was no reason for relaxing the structural separation that had been decreed as a result of that litigation. Similarly, the fact that Greyhound has formally replaced the former owners of Armour is no cause for relaxing the strict prohibition on any combination between Armour and food companies such as Greyhound's other subsidiaries. The decree was, as we have shown, designed to provide a continuing protection against the kind of corporate relationship that ~~now~~ now exists and its literal language prohibits that relationship; the form or motivation of the acts that created the relationship are—apart from remedial matters that we shall discuss in the next section—strictly irrelevant to either the purpose or the literal prohibition.

III. THE DISTRICT COURT HAS, AND SHOULD HAVE EXERCISED, THE POWER TO REMEDY THIS INTERFERENCE WITH ITS DECREE BY ISSUING A SUPPLEMENTAL ORDER AGAINST GREYHOUND AFTER NOTICE AND HEARING

The only question remaining is whether the district court, as a court of equity, has the power to remedy this interference with its decree by a third party. Since Armour has taken no action in this matter, it obviously is not subject to punishment for contempt; nor could Armour, as a corporate entity, be meaningfully prohibited from allowing its stock to be sold to a forbidden owner or directed to do anything that would remedy such ownership. It is only by an order to Greyhound, the owner of Armour and its sister food subsidiaries, that the court can dissolve the prohibited combination by directing divestiture either of Armour or of the other subsidiaries. Unless the court can issue such an order against Greyhound, with appropriate procedural safeguards, it is impotent to preserve the structural barrier that its decree established.[15]

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[15] The district court was plainly wrong in regarding its inquiry as ended when it found that the decree did not expressly prohibit a non-party such as Greyhound from taking over a defendant packer. Obviously a decree cannot be framed to run against all the world in this manner, including firms that might not even come into existence until after the decree has been entered. A court may not thus subject third parties to a direct risk of punishment for contempt without an opportunity to contest the order they are obliged to obey or even notice that it exists. See *Chase National Bank* v. *Norwalk*, 291 U.S. 431, 436–437; *Scott* v. *Donald*, 165 U.S. 107; *Kean* v. *Hurley*, 179 F.2d 888 (C.A. 8); *Alemite Manufacturing Corp.* v. *Staff*, 42 F.2d 832 (C.A. 2). Thus, the district court was purporting to look for something that could not possibly exist. The kind of specific supplemental order that we seek to have entered against Greyhound is, as we shall show, of a very different nature.

Courts of equity are not condemned to such impotence. The simple fact that a person was not a party to a decree when it was first issued does not immunize his future conduct from any impact of that decree. Thus, if a nonparty interferes with or obstructs the operation of an injunction by acts in active concert or participation with a defendant, the nonparty may be held directly in contempt even though there is no injunction specifically against him. Such a person is "bound, like other members of the public, not to interfere with, and not to obstruct the course of justice." *Seward* v. *Paterson,* [1897] 1 Ch. 545, 554 (C.A.); *Marengo* v. *Daily Sketch, Ltd.,* 1 All Eng. Rep. 406 (H. of L. 1948). In federal practice, this aspect of a court's power to vindicate its authority against persons not named in a decree is reflected in Rule 65(d) of the Federal Rules of Civil Procedure.

Nor does the fact that none of the actual parties violates a decree render the decree court powerless to prevent a third party from obstructing its effectuation. The court's power in this situation derives from the inherent nature of its equitable jurisdiction, from the All Writs Act, 28 U.S.C. 1651(a), and in antitrust cases from the specific provisions of Section 5 of the Sherman Act (15 U.S.C. 5) conferring jurisdiction on the court to bring additional parties before it where the ends of justice so require.[16] It allows the

[16] The general principle was well stated in *Mississippi Valley Barge Line Co.* v. *United States,* 273 F. Supp. 1, 6 (E.D. Mo), affirmed *sub nom. Osbourne* v. *Mississippi Valley Barge Line Co.,* 389 U.S. 579:

> "It is well settled that the courts of the United States have the inherent and statutory (28 U.S.C.A. § 1651)

decree court to bring before it such a third party, not for punishment, but for a determination after appropriate hearing whether specific acts by the third party amount to such an interference with the effectuation of the decree as to warrant a supplemental injunction prohibiting such acts; only if such a supplemental injunction is then issued does the third party run the risk of punishment in a further contempt proceeding. Such orders against third parties acting independently of the party or parties bound directly by a decree have been used most notably to prevent interference with school desegregation pursuant to prior decrees. See, *e.g.*, *Kasper* v. *Brittain*, 245 F. 2d 92, 97 (C.A. 6), certiorari denied, 355 U.S. 834; *Faubus* v. *United States*, 254 F. 2d 797 (C.A 8); *Brewer* v *Hoxie School District No. 46*, 238 F. 2d 91 (C.A. 8).[17] A similar supplemental order is appropriate when, as here, that is necessary to prevent interference with the prophylactic structural restrictions of an antitrust decree.

There is, of course, no impediment to such supplemental relief arising out of the fact that the Meat Packers Decree began life as a consent decree rather than an adjudicated decree. For a consent decree is

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power and authority to enter such orders as may be necessary to enforce and effectuate their lawful orders and judgments, and to prevent them from being thwarted and interfered with by force, guile, or otherwise. [Citations omitted.] This rule applies whether or not the person charged with the violation of the judgment or decree was originally a party defendant to the action."

[17] See also, *Bullock* v. *United States*, 265 F.2d 683, 691 (C.A. 6), certiorari denied, 360 U.S. 909; *United States* v. *Wallace*, 218 F. Supp. 290 (N.D. Ala.); cf. *Federal Trade Commission* v. *Dean Foods Co.*, 384 U.S. 597.

not a private contract but a judicial act. *Swift II*, 286 U.S. at 115. It represents an independent exercise of judgment and power by the district court. *E.g., United States* v. *Carter Products, Inc.*, 211 F. Supp. 144, 147-148 (S.D. N.Y.); see *Utah Public Service Commission* v. *El Paso Natural Gas Corp.*, 395 U.S. 464, 476 n. 4 (Harlan, J., dissenting). And the Meat Packers Decree itself contemplated the entry of appropriate supplemental orders; under Paragraph Eighteenth, the district court retained jurisdiction "for the purpose of * * * adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for [its] carrying out and enforcement."[18]

This is not a case in which the government is seeking to vary the substantive terms of a decree. We do not seek to make the decree bind unnamed and unidentifiable parties; the purpose of the petition against Greyhound is to obtain a narrow supplemental order directed to the concrete and specific situation that we brought before the district court, Greyhound's acquisition of Armour. The order would not bind any other third party or any other act that Greyhound might take, and it would not add to or subtract from the obligations of the existing parties to the decree. In other words, we take the decree as we find it, seeking merely a specific supplemental remedy essential to the effectuation of the original decree. There is, therefore,

[18] Indeed, even in the private contract context there is a remedy for a third party's interference with one party's enjoyment of his rights under a contract. A fortiori, a court must be able to remedy interference with a decree entered in the public interest to which the court itself is a party.

no similarity between the issues in this case and the issues that might arise if the government sought modification of the substantive terms of the Decree, and the showing the government is required to make in support of supplemental relief here in aid of the existing Decree is very different from what would be required for modification.[19]

A non-party such as Greyhound is of course entitled to a hearing in the district court before such a supplemental order is issued against it. The government's petition contemplated that such a hearing would be held, and the government was prepared to proceed with one when the district court cut the matter short by dismissing the petition. Such a hearing would permit the new party brought in under Section 5 of the Sherman Act[20] to make, first, the kind of argument that Greyhound made off the record below, and is making in this Court, that the decree does not as a matter of law or fact prohibit the situation sought to be remedied by a supplemental order; for example, it is open to Greyhound to seek to show that it is not in the forbidden food lines. Moreover, Greyhound could

[19] See *United States* v. *Atlantic Refining Co.*, 360 U.S. 19; *Hughes* v. *United States*, 342 U.S. 353; *Liquid Carbonic Corp.* v. *United States*, 350 U.S. 869, reversing *per curiam* 123 F. Supp. 653 (E.D.N.Y.); *Ford Motor Co.* v. *United States*, 335 *U.S.* 303; Compare *Chrysler Corp.* v. *United States*, 316 U.S. 556; *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244. *Hughes*, in dictum at 357; *Chrysler*, *supra;* and *United Shoe Machinery*, *supra*, emphasize the power of an antitrust court to achieve the purpose of its decrees after appropriate hearing.

[20] Section 15 of the Clayton Act (15 U.S.C. 25) contains a parallel provision applicable to proceedings under that Act.

adduce any special reasons why the situation in question should be allowed notwithstanding the prohibition of the existing decree; such a showing would ordinarily be like the showing that Armour itself as a Greyhound subsidiary would make if it sought modification of the decree.[21] Finally, the hearing would deal with the relief to be given in the supplemental order; for example, it might be appropriate in this case to allow Greyhound to divest itself of its food subsidiaries other than Armour, in which event the government would not object to the retention of Armour.

Greyhound asserts in its motion to affirm (pp. 3–12) that, on the facts of this case, its ownership of Armour is immunized by asserted past interpretations of the Meat Packers Decree in the government's dealing with other parties. In substance, Greyhound argues that the government is estopped to assert the structural restrictions of the Decree because it has not acted against other possible violations of those restrictions involving (1) the common interests of the Prince

[21] *United States* v. *Bayer Co.*, 105 F.Supp. 955 (S.D.N.Y.) allowed the government to bring in a third party for proceedings looking to the effectuation of a consent decree, but denied the government relief in the particular circumstances of that case. Substantively the *Bayer* case stands simply for the proposition that a consent decree forbidding one of the parties to a contract to perform its obligations thereunder cannot bind the other party to the contract, who could have been but was not made a party to the antitrust litigation from which the decree resulted. Whenever such special considerations exist, they can of course also be asserted at the hearing on the supplemental order. But there is no such unusual situation in this case.

family (beginning some 35 years ago) in Armour and the Chicago Union Stockyards and (2) the common ownership by Ling-Temco-Vought, Inc. (LTV) of Wilson and Jones & Laughlin Steel Corp. It suffices to point out the obvious proposition that even if the government had acquiesced in prior violations (or chosen for any one of a variety of reasons not to institute litigation, a matter within the prosecutor's discretion), that would not disqualify it from proceeding against a different party on a wholly separate situation.[22]

[22] Neither the Prince situation nor the LTV situation is as analogous to the present situation as Greyhound suggests.

The Prince situation did not involve any corporate relationship between Armour and the Stockyards, in which Armour was prohibited from owning any interest under Paragraph Seventh of the Decree. Greyhound points only to the fact that several officers and directors of Armour had individual interests in the Stockyards which might or might not have amounted to an indirect interest of Armour. This is quite different from the present situation, where Armour and the food subsidiaries are together wholly owned by the same corporation.

With respect to LTV, Greyhound points only to the fact that the government has agreed to a settlement of a suit under Section 7 of the Clayton Act concerning LTV's 1968 acquisition of Jones & Laughlin; the settlement allowed LTV to keep Jones & Laughlin if it disposed of two others of its 20-odd subsidiaries involved in activities related to those of Jones & Laughlin. It is true that LTV also owned Wilson & Co., another of the packer defendants and that the "miscellaneous articles" included in the prohibition of Paragraph Fourth include "bar iron" and "structural steel", which are products of Jones & Laughlin. But the Meat Packers Decree was not in issue in the Jones & Laughlin suit, and there is nothing in that settlement that binds the government to the interpretation of the Decree that Greyhound asserts. See *United States* v. *Ling-Temco-Vought, Inc.*, 315 F. Supp. 1301 (W.D.Pa).

This case is not like *United States* v. *Atlantic Refining Co.*, 360 U.S. 19, where the Court declined to accept a government interpretation inconsistent with an interpretation it had affirmatively endorsed in prior dealings with the same parties on the very matter in dispute. Here, on the other hand, Greyhound is simply making the well-worn plea that the government should leave it alone because the government has allowed others to do other things that Greyhound contends were just as bad. Moreover, Greyhound cannot assert that it relied to its prejudice on any indication by the government that it would not object to its ownership of Armour. Greyhound was informed of the government's clearcut position by, *inter alia*, the litigation against General Host beginning in January 1969 and the specific statement that the Department of Justice made to Greyhound in its letter of November 24, 1969, long before Greyhound acquired Armour.

* * * * *

The impact of the decision below is not limited to the Meat Packers Decree. It generally sanctions business practices which would threaten the effectiveness of other government antitrust decrees, whether litigated or consent. For many other antitrust decrees provide similar structural relief in a variety of monopolization, merger and restraint of trade cases, most commonly to prohibit entry into certain lines of commerce by acquisition and sometimes, as here, to bar any kind of involvement in the prohibited lines.[23] The

[23] Representative structural decrees are set forth in the Appendix, *infra*, which we reprint from our *General Host* brief of last Term.

prophylactic separation that such structural decrees are intended to establish will be seriously undermined if nonparty firms in the forbidden lines can create the very relationship the decree has condemned. It is no answer to say, as did the court below, that "if the situation thus created is inconsistent with the antitrust laws, the government may bring an independent action * * *" (App. 86). As this Court noted in *Swift II*, the very reason for structural prohibitions such as the one we seek to effectuate here is "[t]he difficulty of ferreting out these [potential competitive] evils and repressing them when discovered * * *" (286 U.S. at 119). Thus, unless the ruling of the court below is reversed, structural antitrust decrees in general will be greatly weakened.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the cause remanded for further proceedings looking toward the issuance of a supplemental order requiring Greyhound to divest itself of Armour or of its conflicting food holdings.

Respectfully submitted.

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APPENDIX

Representative Structural Decrees

United States v. *Owens-Corning Fiberglas Corp.*, 1948–1949 Trade Cases, ¶62,442 (N.D. Ohio): defendant enjoined from acquiring any ownership in assets or securities of any person engaged in the manufacture, sale or distribution of fiber glass products. (Paragraph XI.)

United States v. *Loew's, Inc.*, 1950–1951 Trade Cases, ¶62,861 (S.D.N.Y.): distributor defendants enjoined from exhibition business and exhibitor defendants from distribution (except with court permission). (Paragraph VI.)

United States v. *Western Electric Co., Inc.*, 1956 Trade Cases, ¶68,246: Western Electric enjoined from engaging in any business (with limited exceptions) not of a type presently engaged in by Western for the companies of the Bell System; A.T. & T. enjoined from any business but common carrier communications; defendants enjoined from acquiring, either through securities or assets, any manufacturer of common carrier communications equipment. (Paragraphs IV, V, and VIII.)

United States v. *International Cigar Machinery Co.*, 1956 Trade Cases, ¶68,426 (S.D.N.Y.): defendant enjoined from acquiring, either by assets or securities, any person engaged in the cigar making machinery business. (Paragraph IX.)

United States v. *United Fruit Co.*, 1958 Trade Cases, ¶68,941 (E.D. La.): defendant enjoined from engaging in or acquiring any interest in a business engaged in importing or distributing bananas in the United States. (Paragraph VI(A)(2).)

United States v. *Anheuser-Busch, Inc.*, 1960 Trade Cases, ¶ 69,599 (S.D. Fla.): defendant enjoined from acquiring any shares of stock of any corporation brewing beer in Florida or acquiring any interest in any brewing facility or plant of any person engaged in the brewing of beer in Florida. (Paragraph IV (A).)

United States v. *Azteca Films, Inc.*, 1960 Trade Cases, ¶ 69,683 (S.D.N.Y.): defendant enjoined from establishing or acquiring ownership or control of any non-defendant distributor. (Paragraph IV(M).)

United States v. *Driver-Harris Co.*, 1961 Trade Cases, ¶ 70,031 (D. N.J.): defendants enjoined from acquiring a financial interest or capital stock of any other manufacturer of electric resistance materials. (Paragraph VIII(C).)

United States v. *MCA, Inc.*, 1962 Trade Cases, ¶ 70,459 (S.D. Calif.): defendant enjoined from engaging in or acquiring any interest in the talent agency business. (Paragraph IV(1).)

United States v. *America Corporation*, 1963 Trade Cases ¶ 70,923 (S.D. Calif.): defendant enjoined from acquiring all or any part of any interest in any person engaged in the business of professional film processing (except such a business in the New York metropolitan area and in the midwest area). (Paragraph VI.)

United States v. *The House of Seagram, Inc.* (S.D. Fla. 9/23/65) (opinion but not decree reported in 1965 Trade Cases, ¶ 71,517; see footnote 1, page

81,275): defendant barred from acquiring or retaining any financial interest in or participation in the management of any liquor wholesaler in Florida. (Paragraph VI(f).)

United States v. *General Motors Corporation,* 1965 Trade Cases ¶71,624 (E.D. Mich): defendant enjoined from owning any financial interest in another bus manufacturer. (Paragraph IV(A).)

United States v. *Joseph Schlitz Brewing Company,* 253 F. Supp. 129, at 183 (N.D. Calif.): defendant enjoined from acquiring stock of any corporation or any interest in any brewery engaged in the brewing of beer in California. (Paragraph IV.)

United States v. *Grinnell Corporation* (D. R.I., 7-11-67) (judgment not reported): defendant enjoined from acquiring the stock, assets or business of any enterprise engaged in furnishing central station protection. (Paragraph V(C).)

United States v. *Curtis Circulation Company, Inc.,* 1967 Trade Cases, ¶72,279 (D. N.J.): defendants enjoined from holding an interest in any national distributor or wholesaler of publications. (Paragraph VI(B).)

United States v. *Dentists Supply Co. of New York,* and *United States* v. *Pennsalt Chemicals Corp.,* 1967 Trade Cases, ¶72,321 and 72,322 (E.D. Pa.): defendants barred from acquiring any financial interest in any dental supply house. (Paragraphs V of both decrees.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 759

UNITED STATES OF AMERICA,
Appellant,

vs.

ARMOUR & CO. AND GREYHOUND CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR GREYHOUND CORPORATION.

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QUESTIONS PRESENTED.

Greyhound does not agree that "The Questions Presented" are those stated in the Government's brief. It believes that the questions actually presented by the Government's appeal are:

1. Did the District Court err in dismissing the Government's petition to make Greyhound a party to the 1920 Packers' Consent Decree and to grant relief against it, when the petition and supporting affidavit did not allege any facts showing that Greyhound was aiding and abetting a violation of the Decree by Armour, or preventing Armour from complying with the Decree?

2. Does the fact that Armour is a subsidiary of Greyhound, which also owns subsidiaries that deal in food products allegedly forbidden to Armour, make Armour a dealer in such products, or an owner of an interest in the Greyhound subsidiaries, within the meaning of the 1920 Decree?

3. Does the 1920 Packers' Consent Decree enjoin Armour from engaging in the food catering or restaurant businesses?

4. If Greyhound is ordered to be made a party to the 1920 action and the cause remanded, what issues are to be tried in the District Court?

STATEMENT.

This is a direct appeal from an order of the District Court dismissing a petition by the Government to summon Greyhound to appear before the Court and to grant injunctive relief against it. The petition, in substance, alleged: That on February 27, 1920, Armour was perpetually enjoined from dealing in specified food products and from "owning 'any capital stock or other interest whatever' " in any corporation in the prohibited businesses; that Greyhound, through its subsidiaries, was engaged in certain catering and restaurant operations (hereinafter referred to as "restaurants"); that Greyhound had acquired control of 86%* of the stock of Armour and that the control of Armour by Greyhound interfered with the 1920 Decree "by putting Armour in a corporate relationship with a company which deals in food items prohibited to Armour by the Decree" (App. 51-54). The petition was supported by an affidavit by an attorney of the Department of Justice which made substantially the same allegations as those contained in the petition (App. 55-58).

The District Court heard argument by Government counsel in support of the petition at a hearing at which counsel for Greyhound were present (App. 61), but who never entered formal appearances (App. 61, 64). At the conclusion of the argument the District Court delivered an opinion from the bench (reproduced at App. 82-86), and entered an order dismissing the petition because it failed to state any ground upon which relief could be granted (App. 87, 88).

* As the Government points out (p. 14), Greyhound (but not one of its subsidiaries, as the brief states), now owns 100% of Armour's common stock.

The Court stated in its opinion (App. 84):

> "From the foregoing it is clear that Greyhound may not lawfully assist any party, such as Armour, in committing acts prohibited by the 1920 consent decree. But it also follows that Greyhound, which was not a party to the 1920 action, and which at that time had no interest in any of the parties, is not itself bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree. It is the latter that the government now seeks to do. The government has not charged that Greyhound has or threatens to cause or assist Armour, or any of the lines of commerce prohibited to them by the decree. The government's petition states that by acquiring Armour stock, Greyhound has placed Armour in a 'corporate relationship' with a company that deals in prohibited food items. But the decree does not speak in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree."

The District Court judge was Julius Hoffman, who was thoroughly familiar with the Packers' Decree since he had presided over lengthy hearings on petitions filed by certain of the corporate defendants which had sought modification of the Decree. The petitions were denied in an opinion reported in 189 F. Supp. 885 (1960), which was affirmed by this Court without opinion in 367 U. S. 909 (1961). Moreover, he was thoroughly familiar with the legal issues posed by the present petition against Greyhound since, with some exceptions, they raise the same ones that were raised by the Government's petition to make General Host Corporation a party to the Packers case and to enjoin it from taking any action to control Armour's affairs.

SUMMARY OF ARGUMENT.

In this appeal, the Government, in effect, seeks to modify a Court decree without trial and apply new and unheard-of terms, contrary to the Federal Rules of Civil Procedure, to a non-party, on the pretext that this unique and unfair procedure is required to maintain the integrity of other antitrust decrees.

In 1920 Armour, Swift, Wilson and other specifically named and identified defendants agreed to settle a lawsuit. No trial occurred. The negotiated terms, called the *Packers Decree*, are circumscribed: some conduct and some persons were included in the verbose terms; others were excluded.

That lawsuit—never tried—was directed at practices and institutions now historical anachronisms: The decree speaks of "branch house route cars," "auto trucks," "market terminal railroads," and other current World War I practices supposedly used to injure smaller competitors. Each packer agreed not to process or deal in a variety of fruits, vegetables, and miscellaneous articles from babbitt to rolled steel. Unknown and future stockholders of the packers were *not* included in the settlement. The packers, in addition, were free to merge. Three years after the settlement, Armour acquired the assets of Morris Packing Co., a forgotten viable original signatory of the decree. In short, the settlement did not purport to be a universal antitrust injunction against all conduct and all persons.

Greyhound is a stranger to the decree. As a wholly-owned subsidiary of Greyhound, Armour's conduct is impeccable. The Armour distribution system, its forgotten "branch house route cars"—or modern refrigerated trucks

—do *not* carry the vegetables, fruits or "miscellaneous" products identified in the decree. The Greyhound Corporation, as a controlling investor in Armour, has not directed or caused Armour to conduct its affairs inconsistently with the prohibitions of the decree. At no point in this case—in the petition or supporting affidavit—has there been the slightest evidence that Armour's *conduct* violates the provisions of the decree.

The petition and this appeal advance a unique and startling proposition to create a decree violation where none in fact exists: this presumptively lawful investment by Greyhound creates—it is said—a "relationship" that transfers the injunction to other corporate subsidiaries of Greyhound. Armour's *conduct*—through such legal osmosis—includes the business activities of other corporate subsidiaries of Greyhound. Since these other subsidiaries furnish food products as part of a restaurant service—Armour "owns" a prohibited interest in the subsidiaries and a decree violation is created.

A new rule of construction for all antitrust injunctions is advanced. The words mean what the Government says they mean—no more, no less. Every antitrust injunction would, by the suggested reasoning, include terms not part of any court order:

> First, the injunction applies to other businesses of non-party strangers who may invest in the corporation subject to the decree.
>
> Second, the "purposes" of the decree—as seen by the Government—are controlling: action inconsistent with these "purposes" subjects non-parties to court proceedings even if the conduct by the non-party does not cause the party to transgress the injunction.
>
> Third, all decrees apply to future stockholders of a party irrespective of particular language of the decree.

Accepted procedures used to enforce a decree, modify its terms, or apply it to non-parties are courses of action ignored and abandoned in this appeal, which chart a wholly new course and seeks a rule—unprecedented—that

would embellish *every* antitrust decree with new, ill-conceived terms.

This case involves a simple, unsophisticated issue: How can a non-party violate an injunction unless charged with aiding or causing a party to violate the decree?

The only material rule, Rule 65(d), does not apply; the District Court's well-stated analysis is dispositive:

> The consent decree entered in 1920 was in the nature of a permanent injunction. Rule 65(d) of the Federal Rules of Civil Procedure provides that "Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order . . ." This rule states what has long been accepted, that an injunction binds only those who are parties to the action. As Judge Learned Hand said in Alemite Manufacturing Corp. v. Staff, 42 F. 2d 832 (2d Cir. 1930):
>
> > ". . . no court can make a decree which will bind anyone but a party; a court of equity . . . cannot lawfully enjoin the world at large . . ."

The appeal buries and obfuscates this actual limited issue with complicated antitrust references taken from a food and meat bibliography supposedly showing "current" substantial anticompetitive practices by meat packers. The Court is directed to technical studies, reports of national commissions, and data collected from the Economic Research Service. Such "evidence" should be stricken. It is a patent attempt to color the case with facts not of record and designed to construct an antitrust case in the middle of a simple issue involving a decree.

The plan of the appeal is apparent. An ominous—supposedly overriding—public policy consideration is concocted as a makeweight to persuade this Court to abandon traditional equitable principles. The heart of this appeal is that the decree must extend to investing stockholders and the "relationship" to Greyhound's restaurant subsidiaries

must be eliminated to prevent the wholesale circumvention of all other antitrust decrees. This assertion is specious. It ignores the language of the decree and Rule 65(d).

The supposed plan to circumvent antitrust decrees by a forbidden "relationship" adopts the Government's own plan in which another packer, Wilson & Co., was permitted by Court order to *maintain* an identical relationship with LTV and another LTV subsidiary specializing in decree products. The notion that Greyhound has stumbled on a mechanism to avoid "structural" antitrust decrees is not credible; Greyhound's conduct is permitted by the Government's repeated interpretation of the terms of the decree at issue.

The Government's brief collects in an appendix citations to selected "structural" decrees with a stern admonition that antitrust enforcement generally will be undermined if the Government's current position is not sustained. Nonsense. The restraint on industry—preventing specific mergers—is not this proceeding or a 1920 decree, but the Clayton Act (Section 7) and this Court's well-stated decisions from *Brown Shoe Co.* v. *F. T. C.*, 370 U. S. 294 (1961) to *F. T. C.* v. *Procter & Gamble*, 386 U. S. 568 (1967)—defining the parameters of permissible corporate acquisitions.

Three years after the execution of the Packers Decree—when the purposes and competitive ills were fresh to the Court and the parties Armour acquired the assets of Morris & Company, one of the signators to the decree. The legality of the acquisition under the Packers and Stockyards Act was sustained by the Secretary of Agriculture. The decree was not intended to cover all possible anticompetitive acts by Packers or future stockholders but was limited to a specified conduct against specified persons. Now, 50 years later, these terms, so clear and direct, are to be extended by unilateral modification and applied to nonparties on the pretext that all antitrust decrees are endangered.

ARGUMENT.

I.

THE GOVERNMENT ASSUMES, CONTRARY TO THE EXPRESS LANGUAGE OF THE DECREE, THAT ITS TERMS APPLY TO CONTROLLING STOCKHOLDERS AND PROHIBIT NON-PARTIES DEALING IN DECREE PRODUCTS FROM CONTROLLING A PACKER.

The Government contends that Greyhound's ownership of Armour "obstructs and interferes" with the 1920 Packers' Consent Decree because Greyhound also owns two subsidiaries* that are engaged in the restaurant business. According to the Government, the 1920 Decree enjoins Armour from being in the restaurant business; hence, Greyhound, so long as it owns subsidiaries which are also in that business, is prohibited from owning Armour, because obstruction and interference result from this simultaneous ownership of Armour and the food subsidiaries.

Thus, the Government states that one of the questions presented is:**

> "Whether Greyhound's acquisition of Armour created a relationship between Greyhound's subsidiary Armour and Greyhound's food service and restaurant subsidiaries that is prohibited by the Decree." (p. 2.)

If the above issue is the ultimate one in this case, it can be disposed of summarily by the Court. The "relationship" between Armour and Greyhound's food subsidiaries is the same "relationship" that always exists between sub-

* Although the petition alleges that Greyhound owns three (A. 52), Greyhound disposed of one of them while this action was pending.

** This question has been recast from the one stated in the Jurisdictional Statement.

sidiaries of the same corporation, *viz.*, they have a parent corporation that owns them both. But where is there any provision in the Decree that "prohibits" this kind of relationship? The simple answer is that there is none.

The Government assumes that the intention of the Decree was to prohibit stockholders of the corporate defendants—existing and in the future—from engaging in the same businesses forbidden to the corporate defendants. Thus, it says, the "separation intended by the Decree is destroyed" if any defendant packer "enters an ownership relation with a firm which buys meat for sale to consumers or which is substantially engaged in the prohibited food lines" (p. 15).

Putting to one side for the moment legal and constitutional impediments to binding non-parties, such as Greyhound, in an injunction action, there is nothing in the Decree itself that permits the Government's interpretation.

Paragraphs Fourth and Eighth of the Decree are paragraphs enjoining the corporate defendants from dealing in specified food and other items. Each paragraph, in turn, is based upon allegations in the petition that the packers had improperly used "the advantages afforded by" the meat distribution facilities to distribute other foods, "with comparatively no increase in overhead" (App. 20, 21).

The decree in paragraph Fourth contains the controlling provision involved in this case.

> "That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, * * * either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, * * * the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in * * *"

a number of non-meat foods and miscellaneous products (App. 31-33). It further enjoins the corporation defendants from owning, either directly or through their officers, directors, agents, or servants, stock or any other interest in any firm or corporation engaged in the specified businesses (App. 33). Essentially identical provisions in paragraph Eighth prohibit the corporate defendants from engaging in trade in fresh milk and cream (App. 37).

These provisions are clear. The corporate defendants may not deal in the specified articles, either directly or indirectly—that is, through their officers, directors, agents, or servants acting on their behalf or through subsidiary corporations. *However, paragraphs Fourth and Eighth make no mention of stockholders of the packers, whether individuals or corporations*, and thus in no way restrict the businesses in which such stockholders may be engaged.

We think it plain that the omission of stockholders in paragraph Fourth shows an intent that only the corporate defendants and those acting on their behalf be enjoined by that paragraph. The Government's contention that Armour's "ownership relation" with a firm such as Greyhound, which, as sole stockholder, owns Armour, destroys the separation intended by the Decree, simply has no support in its language.

The Decree's limited restrictions on activities of the individual defendants, several of whom were controlling stockholders of meat packer corporations, provide further proof that the Decree was not designed to prevent the packers "from having any ownership relation with" stockholders engaged in a food business. Certain individuals who were large stockholders of defendant companies were named as defendants because, through their substantial financial interests in stockyards, terminal railways, and other institutions connected with the stockyards, and their control of the subsidiary corporations dealing in the substitute

foods, these individuals had enabled the corporate defendants to carry out the alleged restraints of trade and attempted monopolization (App. 23, 24).

Paragraph Fifth of the Decree limits the interests these individual defendants—stockholders—may hold in companies engaged in certain of the product lines forbidden to Armour by paragraph Fourth. Significantly, paragraph Fifth does not entirely preclude the individual defendants from engaging in those businesses but merely enjoins them from owning 50 per cent or more of the effective voting stock of corporations trading in the prohibited articles (App. 33-35). The final paragraph of paragraph Fifth clearly indicates the purpose of the restrictions on the individual defendants. It enjoins those defendants:

> "* * * from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove * * * mentioned * * *, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system (App. 35).

Thus, the Decree permits an individual defendant, who may be a controlling stockholder of a meat packer, also to own effective control of a corporation dealing in a substitute food product, provided he does not misuse his connections with the packers to give the substitute food company an advantage over its competitors.

In sum, no specific provision of the 1920 Consent Decree purports to affect the outside activities of non-defendant stockholders of the meat packers, and not even the defend-

ant-stockholders were completely proscribed from engaging in the businesses forbidden to the packers themselves. The Decree, therefore, does not, in terms, bar a non-defendant stockholder, individual or corporate, from engaging in the substitute food business; nor, contrary to the basic premise of the Government's argument, does it erect a complete structural separation of meat packer and other food interests.

II.

THE PETITION AND AFFIDAVIT DO NOT ALLEGE ANY FACTS SHOWING THAT GREYHOUND'S OWNERSHIP OF ARMOUR IS AIDING AND ABETTING ARMOUR TO VIOLATE THE 1920 PACKERS' DECREE OR THAT AN INJUNCTION AGAINST GREYHOUND IS REQUIRED TO PROHIBIT IT FROM PLACING ARMOUR IN VIOLATION OF THE DECREE.

The District Court regarded the Government's petition as presenting primarily questions of interpretation of Rule 65(d) of the Federal Rules of Civil Procedure (App. 82-86), which, so far as relevant, provides:

> "Every order granting an injunction * * * is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

Rule 65(d), of course, was not in effect when the 1920 Decree was entered, but, as this Court pointed out in *Regal Knitwear Co.* v. *N. L. R. B.*, 324 U. S. 9, 14:

> "This [rule] is derived from the common-law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohi-

bited acts through aiders and abettors, although they were not parties to the original proceeding."

Action as an alter ego, or in collusion, is required to find "concert or participation" under Rule 65(d). *Thaxton* v. *Vaughan*, 321 F. 2d 474, 478 (C. A. 4); *United Pharmacal Corp.* v. *United States*, 306 F. 2d 515, 518 (C. A. 1). As the District Court observed, the Government has not charged that "Greyhound has or threatens to cause or assist Armour, or any of the original defendants, in dealing in any of the lines of commerce prohibited to them by the decree." (App. 84.)

It is also well settled that an injunction is not enforceable against third persons merely because they had knowledge of it. *Chase Nat. Bank* v. *Norwalk*, 291 U. S. 431, 437; *Kean* v. *Hurley*, 179 F. 2d 888 (C. A. 8).

Mr. Justice Learned Hand eloquently expressed this doctrine in *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832 (C. A. 2, 1930), when he said:

> "We agree that a person who knowingly assists a defendant in violating an injunction subjects himself to civil as well as criminal proceedings for contempt. This is well settled law. * * * On the other hand no court can make a decree which will bind any one but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen, and the persons enjoined are free to ignore it. It is not vested with sovereign powers to declare conduct unlawful, its jurisdiction is limited to those over whom it gets personal service, and who therefore can have their day in court. Thus, the only occasion when a person not a party may be punished, is when he has helped to bring about, not merely what the decree has forbidden, because it may have gone too far, but what it has power to forbid, an act of a party. This means that the respondent must either

abet the defendant, or must be legally identified with him."

Under these elementary principles, an injunction against a corporation such as Armour does not bind its stockholders such as Greyhound, unless the litigation in which the injunction was entered was controlled or participated in by the stockholders, which obviously was not the case here. *Zenith Radio Corp.* v. *Hazeltine Research*, 395 U. S. 100, 110; *Foreign & Domestic Music Corp.* v. *Licht*, 196 F. 2d 627 (C. A. 2, 1952); *Hornstein* v. *Kramer Bros. Freight Lines, Inc.*, 113 F. 2d 143 (C. A. 3, 1948). In the *Zenith Radio* case, this Court held that it was error to enter an injunction against a non-party parent corporation of a subsidiary corporation which was a party to a proceeding, without making a determination that the parent was in active concert or participation in the proceeding to which the subsidiary was a party.

These principles are not challenged by the Government.

The Government attempts to avoid them by contriving a violation by Armour by reason of Greyhound's simultaneous ownership of Armour and of Greyhound's food-dispensing subsidiaries. This contrived violation, in turn, is brought about by completely ignoring or reversing the meaning of a simple word used in the Decree (to the extent that the argument recognizes the word's presence in the decree at all), *viz.*, the word "owning."*

The Government's argument nowhere says that Armour "owns" any food dispensing business but that: Armour is enjoined from "having" [*sic*] (p. 17) any interest in a company dealing in the forbidden food items; Greyhound's

* This theory was never advanced in the court below, and is now being urged for the first time. Further, it was never advanced in the *General Host* appeal although the Government says "This appeal presents the same legal questions that were before the Court last term." (p. 3)

subsidiaries deal in such items; Armour, "has" [*sic*] (p. 25) an "interest" in Greyhound's subsidiaries; *ergo*, *Greyhound's* ownership of Armour is "interfering" with Armour's obedience to the Decree.

The argument, strangely, is postulated on the last paragraph of paragraph "Fourth" of the Decree, which, because of its importance, we set forth in full (App. 33).

> "And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from *owning*, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any *capital stock or other interests* whatsoever in any *corporation, firm or association* except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities." (Italics added.)

The question actually posed *by the Decree as written*, then, is whether Armour "owns" an "interest" in the two Greyhound food-dispensing subsidiaries. It may be that a sibling corporation is "interested" in the welfare of a fellow sibling, but that is a wholly different concept from *ownership* of "stock or other [legal] interests" therein.

The meaning of the decretal clause is perfectly clear. It certainly does not have the meaning the Government, without explanation, seeks to engraft on it. The decretal clause was necessary to prevent the corporate defendants from evading the injunction through the device of subsidiaries to carry on business which the corporate defendants could not and whose "capital stock" (in the instance of corporation) or other power of control (as a membership in a joint venture or an association) they owned. Armour thus was enjoined from *owning* an interest in a

company that dealt in products that it was forbidden to deal in. But unless Armour owns capital stock of Greyhound or its food subsidiary neither Armour nor Greyhound is violating the decree.

The Government quotes the clause with the word "owning" at page 7 of its brief, but ignores and subverts it in its argument. Uniformly the brief, wholly without justification, interpolates the word "has" or a variant thereof, rather than "owns" in describing Armour's "interest" in Greyhound's subsidiaries (pp. 2, 14, 15, 17, 22, 25, 27). In so doing, the Government is simply stating that Armour and Prophet Foods, for example, are both siblings of Greyhound.

We suspect that this is the first time that it has ever been seriously urged that a subsidiary "owns" an interest in all the other subsidiaries that its parent may own. Armour no more "owns" any interest in the Greyhound subsidiaries than those subsidiaries do in Armour. Armour and the other subsidiaries are not "owners" of anything beyond their own assets, and they, in turn, are "owned" by Greyhound. But in the Government's Alice in Wonderland* and topsy-turvy legal world Armour really "owns" Greyhound instead of being "owned" by it.

This Court has said that words of statutes should be interpreted where possible in their ordinary everyday sense. *Malat* v. *Ridell*, 383 U. S. 569, 571. And in *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 618, this Court said, "After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

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*"When I use a word," Humpty Dumpty said, "it means just what I choose it to mean—neither more nor less." Lewis Carroll, "Alice's Adventures in Wonderland," Chap. 6.

As we show below, the same interpretation should be given to well-known words used in injunctions, the violation of which can result in severe penalties. Hence, although we appreciate that the interpretation of statutes or legal documents is not necessarily controlled by the dictionary, the dictionary is the normal place to begin in interpreting a document that bears no indicia that its words were used other than in their ordinary and usual meanings.

Webster's 3rd *New International Dictionary* defines "owner":

> "One that has the legal or rightful title, whether the possessor or not."

Ballentine's Law Dictionary (3rd Ed., 1960):

> "One who has complete dominion over particular property. * * * The person in whom the legal or equitable title rests. * * * In common understanding, the person who, in case of the destruction of property, must sustain the loss."

Black's Law Dictionary (4th Ed., 1951):

> "The person in whom is vested the ownership, dominion, or title of property; proprietor. * * * He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. * * *"

See, also, 73 C. J. S., "Property," § 13, p. 197.

It is patent that within the meaning of any of these definitions Armour has no title to, or dominion over, Greyhound's food subsidiaries. We suggest that it is legally preposterous to claim that Armour "owns" an interest in the Greyhound food-dispensing subsidiaries within the meaning of the 1920 Decree.

Judicial decrees, and injunctions in particular, are not to be given tortured and unnatural meanings merely because the Government believes that some beneficial end will be achieved thereby. Injunctions are somewhat akin to criminal statutes in that both proscribe specified acts or omissions. And it is elementary that "A criminal statute is to be construed strictly, not loosely." *United States* v. *Boston & M. R. Co.*, 380 U. S. 157, 160.

Frequently, businessmen must make decisions involving the fates of their companies based upon the interpretation to be given to an injunction. Neither they, nor their attorneys, should be charged with knowing what an injunction forbids, beyond that found in the ordinary meanings of words used in it. With reference to this particular case, Greyhound now has a huge investment in Armour which the Government seeks to place in jeopardy by giving the "ownership" clause a meaning that rationally cannot be ascribed to it. Injunctions simply are not interpreted in this manner—particularly consent injunctions against a person who never consented.

In *International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n*, 389 U. S. 64, 75, this Court, after pointing out that Federal Rule 65(d) is a successor to Section 19 of the Clayton Act, said that "Section 19 was intended to be 'of general application', to the end that '[d]efendants * * * never be left to guess at what they are forbidden to do. . . .'"

And at p. 76, this Court further said:

> "The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid."

Although the Court's remarks in the above case were addressed to the impropriety of vague decrees, they apply with equal force where the meaning of a decree is in issue.

In *J. I. Case Co.* v. *N. L. R. B.*, 321 U. S. 332, 341, this Court said:

> "Courts' orders are not to be trifled with, nor should they invite litigation as to their meaning. It will occur often enough when every reasonable effort is made to avoid it."

In *Terminal R. R. Ass'n* v. *United States*, 266 U. S. 17, 29, this Court said:

> "In contempt proceedings for its enforcement, a decree will not be extended by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree so read."

The fact that this is not formally a contempt proceeding is no reason for not applying the rule of construction laid down in the above case. Injunctions have the same meaning whether the object of the proceeding is to punish someone for a violation or to obtain a further injunction against alleged "interference" with an unmodified decree by a non-party.

Throughout its brief the Government speaks of the "structural terms" of the decree and says that the "Decree's purpose is principally structural rather than behavioral" (*e.g.*, pp. 15, 17). This unwarranted exercise of inventive semantics accomplishes nothing.

The interpretation to be given to a decree is not to be determined or influenced by the Government's label. Rule 65(d) governs all injunctions and makes no distinction, depending upon the label the Government seeks to pin on a particular one. The District Court appropriately observed:

"In addition, a 'purpose' approach is wholly inappropriate because it is the parties who have purposes: the government to secure some relief while conserving resources; the defendants to save money and time, avoid the prima facie evidence rule in private actions, and limit the risk of a more stringent remedy. It is impossible to see how a general scheme can be surmised from provisions which represent a compromise of the parties with respect to the most crucial matters in an antitrust proceeding. And, as it has been observed, nowhere is such a compromise more evident than in the initial decree entered in this case. • • • If the situation created by Greyhound's acquisition of Armour stock is inconsistent with whatever 'purposes' the government believes attach to the 1920 decree, there is still no showing of a violation, or of the kind of 'interference' that will warrant an injunction against a non-party." (App. 85, 86.)

There is a further answer to the Government's game of semantics: All injunctions are "behavioral" in that they either prohibit or command a person from engaging in, or requiring performance of, specified acts. Antitrust injunctions have a "structural" effect in an industry after "behavioral" compliance. Thus, a Court, in rectifying the effects of antitrust violations, may enter an injunction which results in the restructuring of an entire industry. But it adds nothing to the scope of an injunction, or the persons bound by it, to say, as the Government's brief says, that its "purpose" was principally structural rather than behavioral. In the last analysis, the "structural" effect of any injunction is dependent upon the "behavior" enjoined or required, and the persons bound by it.

The Government cites several cases laying down principles that have no application to the case at hand. With one exception, they fall into one of three categories: (1) Contempt proceedings against a non-party who aided a party to violate an injunction; (2) contempt proceedings against a party who violated an injunction and (3) Injunc-

tion proceedings to enjoin a non-party from interfering with compliance by a party who is willing to obey an injunction against him. The simple answer to them is that there is no allegation that Greyhound is violating the Decree, or is aiding and abetting Armour to violate it, or is preventing Armour from complying with it.

Thus, the Government cites (p. 30) *Seward* v. *Paterson* [1897], 1 Ch. 545, 554 (C. A.); and *Marengo* v. *Daily Sketch, Ltd.*, 1 All. Eng. Rep. 406 (H. of L. 1948),* which hold that the Court has jurisdiction to punish for contempt a non-party who, knowing of the injunction, aids and abets the defendant in violating it. It is hardly necessary to go outside of the United States to find authority for a principle embodied in Federal Rule 65(d).

Mississippi Valley Barge Line Co. v. *United States*, 273 F. Supp. 1, 6 (D. C. Mo.),* aff'd, 389 U. S. 579, involved a case where non-parties were acting in concert with the party enjoined to violate the decree with knowledge of it. A motion to enforce the judgment as to them was granted. Under Rule 65(d) they also could have been found in contempt.

Kasper v. *Brittain*, 245 F. 2d 92, 97 (C. A. 6), *cert. den.*, 355 U. S. 834, and *Bullock* v. *United States*, 265 F. 2d 683, 691 (C. A. 6), *cert. den.*, 360 U. S. 909, merely affirmed contempt rulings against parties based on violation of orders enjoining interference with court desegregation orders. The well-recognized obligation of a *party* to obey an injunction, whether erroneous or not, is not an issue on this appeal.

Faubus v. *United States*, 254 F. 2d 797 (C. A. 8), affirmed an injunction against the Governor of Arkansas and others, from using the National Guard to interfere with a court-approved plan of integration. *United States* v. *Wallace*,

* These decisions were relied upon by Mr. Justice Douglas in his dissenting opinion in the *General Host* appeal.

218 F. Supp. 290, enjoined the Governor of Alabama from interfering with a desegregation order. These cases are within the third category above mentioned. *Brewer* v. *Hoxie School District No. 46*, 238 F. 2d 91 (C. A. 8), did not even involve interference with a Court order, but merely enjoined interference with voluntary desegregation.

No one doubts the proposition that a Court may hold in contempt a non-party who knowingly aids a party in violating a decree. Likewise, no one doubts the power of a Court to protect its decrees from actions by a non-party which prevent a party, willing to obey, from complying. In such cases a court can, after appropriate proceedings, enter an injunction against such interference or obstruction.* The trouble with the Government's petition is that it has not alleged such a case. Greyhound is not aiding Armour to violate the Decree, nor obstructing efforts by

* Constitutional requirements of due process may require that the alleged "interferer" be given the right to litigate the correctness of the original consent decree as is shown by *United States* v. *Bayer Co.*, 105 F. Supp. 955 (D. C. N. Y. 1952), and *General Aniline & Film Corp.* v. *Bayer Co., Inc.*, 305 N. Y. 479, 113 N. E. 2d 844 (1953). There the Government obtained consent injunctions against Bayer and others from making royalty payments under contracts that violated the antitrust laws. The payee, General Aniline, was not made a party. General Aniline sued for payments allegedly due in a New York state court. Bayer pleaded the consent decree made payments impossible, but the New York Court of Appeals held the consent decree was not binding upon General Aniline.

In the Federal District Court the United States brought a supplemental complaint against General Aniline alleging it was obstructing the consent decree and asking that it be ordered to discontinue its New York action, then still pending in the New York courts. The District Court refused to hold that the consent decree was binding on General Aniline and permitted it to contest the Government's original claim. Summary judgment was later entered in favor of the Government. 135 F. Supp. 65 (D. C. N. Y.).

In the above case General Aniline was certainly "interfering" with Bayer's obedience to the consent decree which it was willing to obey since it enjoined the payment of money by Bayer (105 F. Supp. at 957). Hence, mere proof of "interference" by a non-party

Armour to comply. The Government attempts to contrive "interference" or "obstruction" by the specious argument, already discussed at length, that Armour "owns" an interest in the Greyhound food subsidiaries, contrary to the 1920 Decree.

III.

THE GOVERNMENT POSITION IN THIS APPEAL IGNORES THIRTY YEARS OF CONTROLLING AND CONTRARY INTERPRETATION UNDER WHICH STOCKHOLDERS HAVE BEEN PERMITTED TO MAINTAIN THE RELATIONSHIP NOW ATTACKED.

The Government contends that, if a stockholder is engaged in a business forbidden to Armour, it cannot acquire control of Armour. In point I we have shown that the plain language used does not permit such an interpretation. We now show that, until this proceeding, and the proceeding against General Host, the Government has consistently interpreted the Decree contrary to its present position.

The petition against Greyhound was filed June 18, 1970 (A. 54). Even before this, the Government had concluded a settlement with Ling-Temco-Vought, Inc. on March 10, 1970 (App. 24), pursuant to which a consent decree was

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against a party willing to obey a consent decree does not necessarily preclude the non-party from contesting the correctness of the underlying injunction.

We are not suggesting, on the authority of *Bayer*, that Greyhound, as an alleged "interferer" with the 1920 Consent Decree against Armour, would, upon any remand, have the right to make the Government prove the charges contained in its 1920 complaint against Armour. We do suggest, however, that when a non-party is charged with "interfering" with the alleged "purposes" of an antitrust consent decree that that issue be resolved in the light of the state of competition in the relevant markets at the time when the hearing may be held. This aspect of the case is discussed at greater length in the concluding section of this brief.

entered on June 10, 1970,* that interpreted the Decree exactly contrary to the Government's present contention. The LTV consent decree permits LTV to control Jones & Laughlin, a corporation that deals in products forbidden to the Packers, while at the same time it owns a controlling interest in Wilson & Co., a corporation bound by the 1920 Consent Decree. In more detail:

LTV owns more than 80% of the common stock of Wilson & Co. LTV, through a subsidiary, owns 81.4% (App. 56) of the common stock of Jones & Laughlin. The 1920 Decree, in addition to prohibiting the Packers from dealing in specified food items, also forbade them from dealing in "structural steel" and "bar iron" (App. 33). These products, needless to say, are manufactured and sold in large quantities by Jones & Laughlin.

Greyhound is a holding company that controls a number of subsidiaries, including bus operating companies, Armour, and two corporations engaged in the restaurant business. Thus, the situation between LTV and Greyhound in their relations to a packer-subsidiary is exactly parallel (See Exhibit A attached).

The LTV case is not the only time that the Government has interpreted the 1920 Decree exactly opposite to the way it "interprets" it now.

The Government for years acquiesced, with full knowledge, in the joint control by the Prince family interests of both Armour and the Chicago stockyards. Since the provision in paragraph Second of the Decree forbidding meat packers to own stockyards is in its language essentially identical to paragraph Fourth, which forbids meat packers to deal in groceries, this continuous interpretation of the stockyard clause by the agency charged with enforcement of the Decree, is additional persuasive evidence that no

* The decree is reproduced in Supp. A. 25-40, but date of entry is not shown. It is reported in 1970 Trade Cases ¶ 73,105.

complete structural separation of meat packers, stockyards, and substitute food interests was intended.

The uncontested facts regarding the interlocking relationship between Armour and the stockyards, through the Prince family, as of the close of 1968, are as follows (App. 46-50):

Pursuant to Paragraph Second of the 1920 Decree, Armour was compelled to divest itself of the Union Stock Yard & Transit Co., which operated the Chicago public stockyards* (App. 47). This stockyards company owned directly 12,600 shares of Armour common stock and itself was wholly owned by F. H. Prince & Co., Inc., which owned,

* Throughout this proceeding the Government has insisted that Greyhound cannot control Armour while it also owns subsidiaries engaged in the restaurant business. Its entire case is premised on the proposition that the Decree forbids Armour to engage in the restaurant business. There is no language so providing, but the Government points to the exception in paragraph Fourth, which permits the packers to operate restaurants primarily for the benefit of their employees. The same paragraph also excepts laundries, a business not otherwise mentioned, either in the complaint or the Decree.

We dispute the Government's assumption that the decree enjoins the packers from engaging in the restaurant business. The scope of the decree is not to be determined by what the Government termed the "negative implications" of the exception in its Jurisdictional Statement. An injunction cannot be extended by implication. *Terminal R. R. Ass'n* v. *U. S.*, 266 U. S. 17, 29. In *United States* v. *Swift & Co.*, 286 U. S. 106, 115, this Court held that the purpose of enjoining the Packers from "dealing" in "groceries" was in order to protect wholesalers and retailers therein from possible destructive competition. Restaurant operators are not regarded as "dealers" in "groceries."

Again, the Government's prior interpretation of the Decree supports Greyhound's position and is contrary to its present position in this proceeding. As shown in the text, F. H. Prince & Co. and related interests controlled about 13% of the common stock of Armour (A. 49). The Prince corporation owns 100% of the Union Stockyards Company, which includes among its business activities the operation of restaurants (A. 47). There is no difference in principle between Greyhound simultaneously controlling Armour and its restaurant subsidiaries, and the Prince interests simultaneously controlling Armour and a subsidiary corporation operating restaurants.

either directly or through other subsidiaries, over 356,000 shares of Armour common stock (App. 48). Moreover, the stock of F. H. Prince & Co., Inc. was owned by the Frederick H. Prince Trust of 1932, a trustee and income beneficiary of which was William Wood Prince, former Chairman and Chief Executive Officer of Armour (App. 47). This trust and other related trusts, and Mr. Prince directly, owned additional shares of Armour stock. The Prince trusts and the officers and directors of Armour working under Mr. Prince controlled approximately 13 per cent of the outstanding common stock of that company (App. 47, 48).

Nor was the connection between Armour and the Union Stock Yard & Transit Co. solely one of joint ownership. In addition to being Chairman and Chief Executive Officer of Armour, Mr. Prince served as President and Director of F. H. Prince & Co., Inc., which owned the stockyard company. James Donovan was a director and member of the executive committee which controlled the daily operations of Armour, as well as Chairman of the Union Stock Yard & Transit Co., Vice President and Director of F. H. Prince & Co., Inc., and Co-Trustee of the Frederick H. Prince trust. Charles Potter was a director and member of the executive committee of both Armour and F. H. Prince & Co. and was president of the stockyard company (App. 47).

Thus, it is not disputed that the management of Armour owned, directly or indirectly, effective control of both Armour and certain public stockyard companies and restaurants, and that there was substantial interlocking of directorates.

Paragraph Second of the Decree prohibits:

> "the defendants * * * from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States * * *" (App. 29)

This paragraph was at least as important a part of the relief afforded by the Consent Decree as were the similarly-worded paragraphs Fourth, Fifth, and Eighth. The great concern of the complaint with the effects upon commerce of the control of the stockyards by the packers and individuals associated with them is evident, for a substantial portion of the complaint was devoted to a description of how ownership of the stockyards permitted the packers to restrain trade in meat (App. 12-15).

There is no difference in principle between the Princes' control of the stockyards (forbidden to Armour by paragraph Second of the Decree) and Greyhound's control of restaurant subsidiaries, for in both cases those holding control of Armour are engaged in businesses forbidden to Armour itself—assuming that the Decree forbids Armour to engage in the restaurant business.

The Government has never denied that it has been aware of the interlocking ownership of Armour and the stockyards since at least the 1958-60 modification proceedings (App. 50). Nor has it denied that no proceeding was ever instituted based on the theory that the Decree mandated "complete separation" of meat packer and stockyards interests (App. 50).

The Government attempts to pass off the Prince situation by saying, "that it did not involve any corporate relationship between Armour and the Stockholders, in which Armour was prohibited from owning any interest under Paragraph Seventh of the decree." (p. 35). This is no valid distinction because, in this context, individuals as well as corporations could forge anticompetitive interlocking relationships. Indeed, the very allegations of the petition to which the stockyards clause of the decree responds referred to the efforts of the "parent companies and their controlling heads" to obtain control of stockyards and their appurtenances (App. 17); and the stockyards clause itself extends to all defendants, individual as well as corporate.

The real reason for the Government's acquiescence in the Prince interests' control of the Stockyards business was that, like Greyhound, they were the controlling shareholders of Armour, not Armour itself, and as such, under any reasonable reading of the decree, were not bound by its provisions.

The Government's interpretation of the decree for at least a generation—consistent with the Greyhound's legal position—is disposed of by noting that the Government can not be "estopped". (P. 34) The lessons taught by this history have little to do with estoppel but a great deal to do with the correct "interpretation" of the decree's language.

Although a consent decree is to be treated as a judicial act and not as a contract (*United States* v. *Swift & Co.*, 286 U. S. 106, 115), numerous decisions have stated that, in construing them, their contractual aspect should be considered. *American Radium Co.* v. *Hipp, Didisheim Co.*, 279 F. 601, 603 (D. C. N. Y.), aff'd 279 F. 1016 (C. A. 2); *Hodgson* v. *Vroom*, 266 F. 267, 268 (C. A. 2); *Torquay Corp.* v. *Radio Corp. of America*, 2 F. Supp. 841, 843 (D. C. N. Y.); *Artvale, Inc.* v. *Rugby Fabrics Corp.*, 303 F. 2d 283, 284 (C. A. 2); *Hart, Schaffner & Marx* v. *Alexander's Department Stores, Inc.*, 341 F. 2d 101, 102 (C. A. 2); *United States* v. *Hartford Empire Co.*, 1 F. R. D. 424, 426 (D. C., Ohio); *Wilson* v. *Haber Bros.*, 275 F. 346, 347 (C. A. 2); *Davey Tree Expert Co.* v. *Frost & Bartlett Co.*, 300 F. 680, 681; *Freeman on Judgments*, Vol. 3 (5th Ed., 1925), § 1350.

Generally speaking, the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence. *Old Colony Trust Co.* v. *Omaha*, 230 U. S. 100, 108. The fact that the Government's interpretations in the Prince and LTV situations are against its present position is to be given special

weight in interpreting the Consent Decree. "The practical construction against interest of a contract by a party thereto may constitute the strongest evidence of its intent." *Cutting* v. *Bryan*, 30 F. 2d 754, 756 (C. A. 9), *cert. den.* 279 U. S. 860; *Natco Corp.* v. *United States*, 240 F. 2d 398, 403 (C. A. 3).

In particular, this Court has held that when, over a substantial period of time, the Government interprets a consent decree to permit certain conduct, it may not suddenly reinterpret the decree to make that conduct unlawful. *United States* v. *Atlantic Refining Company*, 360 U. S. 19 (1959). The rationale for this principle is, reasonably, that in determining the scope of a consent decree the interpretation given by its signatories is entitled to great weight,* and a later change in construction suggests that the signer is attempting to modify the decree *sub silentio*. Id. at 23.

Furthermore, in *Atlantic Refining* this Court held that the Government's contention that its new interpretation would more nearly effectuate "the basic purpose" of the statutes to which the decree related

> "does not warrant our substantially changing the terms of a decree to which the parties consented without any adjudication of the issues. And we agree with the District Court that accepting the Government's

* Analogous is the principle that "[w]hen faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall* v. *Tallman*, 380 U. S. 1, 16 (1965). "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" *Power Reactor Dev. Co.* v. *IUE*, 367 U. S. 396, 408 (1961), quoting *Norwegian Nitrogen Prods. Co.* v. *United States*, 288 U. S. 294, 315 (1933). "When the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order." *Udall* v. *Tallman*, *supra*, 380 U. S. at 16.

present interpretation would do just that. Cf. *Hughes v. United States*, 342 U. S. 353 * * *

"We * * * hold that where the language of a consent decree in its normal meaning supports an interpretation; where that interpretation has been adhered to over many years by all the parties, including those government officials who drew up and administered the decree from the start; and where the trial court concludes that this interpretation is in fact the one the parties intended, we will not reject it simply because another reading might seem more consistent with the Government's reasons for entering into the agreement in the first place." 360 U. S. at 23-24 (footnotes omitted).

The Government attempts to pass off the *Atlantic Refining* decision with the comment that "Greyhound is simply making the well-worn plea that the Government should leave it alone because the Government has allowed others to do other things that Greyhound contends were just as bad" (Br. 36). This is not Greyhound's position at all, although it is not inappropriate to observe that uneven-handed administration of a decree is a just cause for complaint. Equal treatment in the enforcement of decrees is equally as important in the administration of justice as is their rendition in the first instance. The interpretation we urge here was knowingly acquiesced in by the Government as to Armour, the only other party to the Decree now before the Court, when Armour had a different controlling shareholder. Our point simply is that the Government's interpretation of the Decree in the other situations discussed above is to be given great weight just as its prior interpretation was given great weight by this Court in the *Atlantic Refining* decision.

IV.

THE GOVERNMENT IS IMPERMISSIBLY SEEKING TO MODIFY THE SWIFT DECREE WITHOUT THE NECESSARY FORMAL MODIFICATION PROCEEDINGS.

When the 1920 Consent Decree was negotiated, no one contemplated that another corporation might one day acquire control of one of the large and powerful meat companies. The antitrust problems were due to the practices of the meat companies and their then controlling shareholders. They, and they alone, were made the subject of injunctive relief. No provision was included to preclude a corporation from owning stock of a meat packer merely because the corporation was engaged in a business forbidden to a packer, even if it be assumed one could have been. In these circumstances, the Government's claim that Greyhound cannot control Armour so long as it has restaurant subsidiaries is, in effect, an attempt to modify the Decree.

The Courts, however, have consistently refused to modify decrees in proceedings purporting to seek only a construction of those decrees. For example, in *United States* v. *Continental Can Company*, 143 F. Supp. 787 (N. D. Cal., 1956), where the Government moved for an order construing a final judgment, the Court looked to the record relating to the entry of the decree and to the language of the decree itself to determine what the decree encompassed. Pointing out that "[a] judgment is limited in its application to the issues actually presented by the pleadings and intended to be adjudicated at the time of entry" 143 F. Supp. at 789. The Court rejected the proposed interpretation and suggested that, if the Government feared anticompetitive effects from the proposed acquisition it could begin a new

proceeding under Section 7 of the Clayton Act, 15 U. S. C. § 18.*

As Judge Hoffman found in the *General Host* proceeding, the 1920 consent Decree was "obviously the product, in principal part, of extensive negotiation between the defendants and the Government and is a detailed and carefully worded decree" (App. 150). A consent decree such as this inherently embodies a compromise, and thus may well not provide all the relief which the Government would request were the case to go to trial. See *United States* v. *Blue Chip Stamp Company*, 272 F. Supp. 432, 440 (C. D. Cal. 1967), *aff'd sub nom. Thrifty Shoppers Scrip Company* v. *United States*, 389 U. S. 580 (1968). As this Court has recognized, "the circumstances surrounding * * * negotiated agreements are so different that they cannot be persuasively cited in a litigation context."** Relief directed on consent of the parties, where there has been no judicial finding of violation of law, need not be—and typically is not—as extensive as that which might have been ordered after trial.

The Government's argument, in essence, is that this Decree, entered on consent in 1920, should be interpreted to include relief on which it would insist were the Decree

* Accord, *United States* v. *Western Electric Co.*, 409 F. 2d 1377, 1379 (1969), *cert. den. sub nom. Components, Inc.* v. *Western Elec. Co.*, 90 S. Ct. 152 (1969); *United States* v. *American Soc'y of Composers, Authors & Publishers*, 331 F. 2d 117 (2d Cir.), *cert. den.* 377 U. S. 997 (1964); *Standard Oil Co.* v. *Clark*, 163 F. 2d 917, 930-31 (2d Cir. 1947), *cert. den.* 333 U. S. 873 (1948), where the Court reiterated that the specific provisions of a consent decree should be read in light of the decree's general purpose. *Cf. Terminal R. R. Ass'n* v. *United States*, 266 U. S. 17, 29 (1924):

> "In contempt proceedings for its enforcement, [an antitrust] decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree so read."

** *United States* v. *E. I. du Pont de Nemours & Co.*, 366 U. S. 316, 330 and n. p. 1 (1961).

being negotiated today. However, having agreed to less than all the relief to which it might have been entitled after a trial, the Government cannot now obtain expansion of the Decree beyond its terms. *Ford Motor Company* v. *United States*, 335 U. S. 303, 320, 322 (1948); *United States* v. *International Harvester Company*, 274 U. S. 693, 702-03 (1927); *United States* v. *Radio Corporation of America*, 46 F. Supp. 654 (D. Del. 1942), *appeal dismissed*, 318 U. S. 796 (1943); see *Swift I*, 276 U. S. at 327; *United States* v. *American Society of Composers, Authors & Publishers*, *supra*, 331 F. 2d at 123-24. The Government, as much as a defendant, is bound by the terms of the Consent Decree.

As we have seen, a consent decree, although a judicial act, has contractual aspects. Such a decree is limited to its four corners, and, unless a formal modification proceeding is undertaken, is not subject to expansion or contraction by the Court. *Dart Drug Corporation* v. *Schering Corporation*, 320 F. 2d 745 (D. C. Cir. 1963); *Artvale, Incorporated* v. *Rugby Fabrics Corporation*, 303 F. 2d 283 (2d Cir. 1962); *American Radium Company* v. *Hipp, Didisheim Company*, 279 Fed. 601, 603 (S. D. N. Y. 1921), *aff'd* 279 Fed. 1016 (2d Cir. 1922).

The Government's effort in this case to expand the 1920 Decree to affect the outside business activities of Armour's controlling shareholders is an impermissible attempt to modify the decree *sub silentio*, similar to that rejected by this Court in *Hughes* v. *United States*, 342 U. S. 353 (1952). There, too, the Government asked the Court to construe a consent decree "so as to achieve the purposes of the entire * * * decree,"* the thrust of which, it claimed, was to divorce production-distribution companies from theater exhibition companies. The construction sought by the Government would have required Hughes, who owned stock in both types of company, to sell one type of stock.

* 342 U. S. at 357.

Although recognizing that this single ownership might well impede competition, the Court declined to adopt the Government's interpretation of the decree, for it found "no fair support for reading that requirement into the language of" the decree.* Moreover, the Court refused to order modification of the decree either under the provision reserving power to amend or under the inherent equity powers of the Court, since Hughes had not been heard on the question whether sale of one block of stock was required to effectuate the purposes of the decree. Accord, *Liquid Carbonic Corp.* v. *United States,* 350 U. S. 869 (1955). *reversing* 121 F. Supp. 141, *as modified,* 123 F. Supp. 653 (E. D. N. Y. 1954); *United States* v. *Continental Can Company, supra.*

V.

THIS APPEAL RAISES THE SPECTER OF SUPPOSED CIRCUMVENTION OF ANTI-TRUST DECREES AS A MAKEWEIGHT PUBLIC POLICY PRETEXT FOR ADOPTING UNPRECEDENTED AND ILL-CONCEIVED NEW RULES TO APPLY TO ALL ANTITRUST DECREES.

This appeal poses a classical question: Do the purposes or "ends"—as seen by the Government—justify the use of any means to accomplish such objectives. The Government contends that a stockholder relationship between Greyhound and Armour is "anti-competitive". The Government assumes a trial has occurred in which facts show "a substantial imbalance" between buyers and sellers in an industry in which the sellers extract "substantial concessions" to the disadvantage of "less powerful buyers". The foreclosure between Greyhound and Armour will create "unjustified price concessions and product preference" by a "sister subsidiary" and substantial "threats to competition in the meat industry" are portended.

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* *Ibid.*

Technical studies, national commissions and economic research services are "evidentiary sources" supporting the necessity of creating—now—an "important bulwark of competition in the food industry". Without benefit of a complaint, discovery or trial, Greyhound is found by reference to a food and meat bibliography to have violated basic antitrust laws on competitive relationships (p. 20-24).

Armed with such gross violations and wrongdoing, the appeal proceeds to chastise the District Court for not accepting any "means" immediately available to right this unfortunate preconceived "wrong". The 1920 settlement —the Packers Decree—which carefully excises from its provisions any suggestion that future "stockholders" are bound by its terms and which does not even include "successors and assigns*—is the vehicle or method of summarily disposing of this "anti-competitive" occurrence, to wit: the relationship of Greyhound to Armour.

This record contains no evidence of any anticompetitive effects between Greyhound and Armour. Unsupported assumptions on meat purchases, reciprocity and price structure are not "evidence". They are sprinkled through the appeal to color the case and develop "equity" to support a drastic extension of recognized legal principles.

Behind this anti-trust "facade" is a staggering principle: Every anti-trust injunction entered not only binds the parties to it, but also all "successors and assigns" and any future controlling shareholder. The Justice Department for almost a century has properly imposed restrictions, after trial, or through settlement, to maintain workable competition under the laws that agency is charged with administering. Never—in all these years—so far as we know, has that agency suggested that these terms be included in any anti-trust decree. It is not "all struc-

* Excepting paragraph "Third" (App. 24), not involved in this proceeding.

tural anti-trust decrees" which are at issue in this proceeding but, rather, simple principles of equity and the basic legal doctrine on which all agencies, public and private, have relied and operated on for many years.

Every anti-trust decree, the Governments appeal contends, applies to other properties of investing shareholders and operates against the world with an undisclosed and heretofore unknown ominous provision: persons who act contrary to a "purpose" of a decree are bound by the decree and violate it although they have done nothing the decree forbids or abetted a violation. It is not necessary under the Government's view, to meet the requirements of Rule 65(d).

If the Government's position is sound it will no longer be necessary to modify decrees. The time the Court spent in processing petitions such as *U. S.* v. *United Shoe,* 391 U. S. 244, was unnecessary. If the purpose of a decree as envisioned by the Government requires certain language or certain results, then the private sector of the country must operate with that principle in mind and realize that one who acts inconsistently with the underlying "purpose" of a decree is bound by its terms and foreclosed from such conduct.

The *United Shoe* case is an interesting analogy. In this case, the Government observes that Greyhound's action is contrary to the "competitive structure" and original purposes of a decree. In *United Shoe* this Court observed that the shoe decree was "specifically designed to achieve the establishment of workable competition by various means * * *."

The Government's objective—to believe the brief—has been thwarted in this case. In *United Shoe* the Government contended "that the decree has failed to accomplish this result." (Workable competition.) In this case, the decree

is simply to be interpreted—irrespective of its provisions to cure a claimed defect and restore a claimed situation as originally conceived by the Government in 1920. In *United Shoe,* the Justice Department—relying on more established principles—sought a new "trial" in which the decree would be modified to include new provisions if the trial were successful. But in this proceeding the Government seeks a *"caveat emptor"* rule that places all stockholders on notice: A controlling stockholder is bound by the terms of any anti-trust decree entered against the company in which he is investing.

The justification for this dramatic change in the law is founded on the example which Greyhound has supposedly set to "circumvent" all anti-trust decrees. Thus, the brief pretends the *Schlitz Brewing* case (253 F. Supp. 129), as an illustration, will be thwarted, since Schlitz is under an injunction not to acquire any California brewer. No other company is under such an order. LTV is not. Other conglomerates are not. If a conglomerate—ITT, LTV, etc.—with a brewery in California acquired Schlitz, the decree does not prohibit that transaction—but good sense does. Director fiduciaries are accountable to their shareholders, and to the FTC and the Department of Justice, in their administering of the anti-trust laws. Wholly apart from this proceeding, a conglomerate with a California brewery is "restrained" from acquiring Schlitz because the acquisition would undoubtedly be nullified under Section 7 of the Clayton Act since a court has already determined that the brewery industry is too concentrated in California. The addition of the entire Schlitz system to whatever property the "stockholder" owns in California would probably constitute a per se violation of section 7 and the Sherman Act as well.

To win this appeal and to support an unprecedented change in equitable rules applying to injunctions requires

a major public policy consideration so that traditional law can be abandoned for this "noble" objective. The noble objective is make-believe. Greyhound's action does not serve as an example for anyone to acquire Schlitz whether or not such acquiring company owns a brewery in a prohibited area—California.

Moreover, the action of Greyhound is not unique but merely conforms with the Government's own "circumvention rule" adopted in the *LTV* case in Pittsburgh. The Government, in chastising Greyhound for establishing a mechanism for circumventing decrees, ignores its own conduct in which an identical arrangement has been approved at its request by a Federal Court.

The *LTV-Wilson* matter is quietly put to one side in the appeal brief by placing it under the convenient legal heading "Government Estoppel".

> "In substance, Greyhound suggests that the Government is estopped * * * because it has not acted against other possible violations." (p. 34)

This neat and tidy disposition of the LTV Government solicitation is unfair. How can the Government accuse Greyhound of devising a universal decree end-around or "circumvention", when the "wrongdoer" has merely the Government's own example. There is no estoppel involved. At issue is the credibility of this public interest justification for burying the limitations of Rule 65(d) under the pretext that Greyhound has "designed" a method of circumventing all anti-trust decrees. The analogy to LTV—a plan and program spawned by the Government and solicited in a Federal Court—is dispositive. Greyhound and LTV are both forms of conglomerates, each of whom has a major transportation system—Braniff-bus lines; each has a computer subdivision; each owns a packer by a stockholder relationship: Wilson and Armour, the packer in each instance, are corporate sub-

sidiaries; each packer is under the decree; and each company, LTV and Greyhound, has through other subsidiaries investments in other corporations that have products included in the decree, assuming it covers restaurant operations.

The structural anti-trust decrees collected in the appendix can be "circumvented" by using the Justice Department's LTV settlement plan, which permits LTV to own a packer and, in another corporate subsidiary, a company manufacturing decree products.* Since the LTV settlement was filed in Pittsburgh, there does not appear to be a single instance in which any of the structural anti-trust decrees collected in the appendix have been "circumvented" and the reason is patently clear. No corporation owning a brewery in California is about to acquire Joseph Schlitz Brewing Company—with a principal brewery in California—because it will violate anti-trust law. It has

* Moreover it is appropriate to point out that, out of the fourteen reported representative decrees which the Government urges are in danger of being undermined, (see Brief for U. S. Appendix) six, in effect, prevent a takeover of the antitrust defendant by an acquiring firm engaged in prohibited businesses. The six decrees enjoin the defendants from knowingly permitting any of its officers, directors or employees to serve at the same time as an officer, director or employee of any other enterprise in the prohibited lines. (See Appendix to Greyhound Brief for a full text of relevant provisions.) If the 'Meat Packers' Decree had contained this commonly used provision, Greyhound would never have acquired control of Armour.

The decree in *United States* v. *Loew's Inc.*, 1950-1951 Trade Cases ¶ 62,861 (S. D. N. Y.) (Greyhound Brief, Appendix), not only enjoins interlocking directors and employees but also provides an additional remedy by requiring the defendants to adopt by-laws containing the prohibition. For other examples of these common provisions, see *U. S.* v. *Richfield Oil Corp.*, 1967 Trade Cases ¶ 72,066 (S. D. Cal.) (par. 3). *Western Newspaper Union*, 1960 Trade Cases ¶ 69,192 (W. D. Mo.) (par. IV), and *Linen Supply Institute of Greater New York, Inc.*, 1958 Trade Cases ¶ 69,120 (S. D. N. Y.) (par. VII).

A study of the eight other reported representative decrees cited by the Government indicates that their provisions as to acquisitions were either intended to restrain the acquisitive behavior of the con-

nothing to do with the structural decree "circumvention" suggested to the Pittsburgh court in the *LTV-Wilson* settlement and it logically follows that it has nothing to do with Greyhound-Armour, an identical "circumvention".

Again, the justification or excuse for applying such an unprecedented procedure to Greyhound is the "competitive mischief that would inhere" (p. 23). This argument is reduced to its logical absurdity with the suggestion that the only infirmity to the acquisition of Armour by A & P, or Swift by Kroger, is this unique construction. Such an assertion is frivolous, and ignores all anti-trust activity of the Department of Justice and the decisions of this Court, uniformly avoiding such mergers on a showing of the requisite anticompetitive effects that flow from such vertical combinations. The Government treats American industry as if it operated on day-to-day reference with the Packers' Decree, a document which none of them, save the packers, have probably ever heard of, based as it is on historical competitive anachronisms of our pre-Coolidge economy. The Government brief argues that the suggested "inter-

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senting defendants and were not "structural" decrees except in this limited sense, or they failed to include a supplementary prohibitory clause because it was patently unrealistic to anticipate that the defendant, for example, A. T. & T., would be the subject of a take-over. See, *e.g.*, *United States* v. *Western Electric Co., Inc.*, 1956 Trade Cases ¶ 68,246 (D. N. J.).

There may be a few cases in which a provision having the effect of barring the acquisition of the defendant by a third person in the prohibited lines was omitted by oversight in a decree which actually contemplated full "structural relief," although the Government has not cited any such decrees. If it is true that such decrees "will be seriously undermined," then the Government can prove the undermining by sufficient facts and thus meet the requirements for obtaining a modification. In *United States* v. *United Shoe Corp.*, 391 U. S. 244, this Court held the Government, in seeking a modification of a decree, does not have to meet the tests of *United States* v. *Swift & Co.*, 286 U. S. 106, applicable to a defendant seeking relief from a decree, where the Government's purpose in seeking modification is to make the decree accomplish its intended result.

pretation" is needed, because neither A & P, Safeway, nor Kroger—let alone the packers—has any knowledge of the restraints imposed on them, by the anti-trust decisions of this Court and, but for the appeal brief uncovering a manipulation possible in all anti-trust decrees, transactions as those suggested on p. 27 of the appeal brief would be consummated with all haste.*

Implicit in this collection of potential combinations is the underlying premise on which this appeal is based, to wit, such mergers are contrary to the public interest, in that they represent combinations which restrain trade, or substantially lessen competition. The Greyhound-Armour "relationship" is disposed of by reference. It, too, is "anti-competitive". Such irrelevant comment does not add one iota to the analysis of the language of the Decree, and whether it applies to stockholders. The Government has filed, tried, and argued an anti-trust case, the essence of which is that the Greyhound-Armour merger violates certain anti-competitive principles customarily reserved for anti-trust cases. It is in this context that the same Government, interpreting the same Decree, can accept

* Armour contracted with Morris & Company, an original signatory to the decree (A. 44), to acquire all of its assets. The Secretary of Agriculture later filed a complaint against all the parties, charging that the acquisition violated an antitrust provision of the Packers and Stockyards Act, namely, § 202(e) (7 U. S. C. § 192(e)). On September 14, 1925, the Honorable William M. Jardine, Secretary of Agriculture of the United States, found "that the evidence is insufficient to sustain the charges made in the complaint" and ordered the proceeding dismissed without prejudice. In his opinion the Secretary of Agriculture stated (p. 10): "The overwhelming weight of the testimony is in favor of the view that competition has not been materially lessened by reason thereof [the acquisition], either in buying of livestock or the sale of the meat or meat products thereof." (*Secretary of Agriculture* v. *Armour & Company of Illinois, et al.*, Doc. No. 19.)

It is obvious from the above that the Decree was never considered a panacea to forbid all anticompetitive actions that might thereafter occur in the meat packing industry. The Packers Decree is not even mentioned in the Secretary's opinion above referred to.

some "circumventions", and not others. The *LTV-Wilson* analysis and the Greyhound-Armour evaluation differ only because the Government senses more anti-competitive effects in one, compared to the other. The Government, in its brief filed last May, suggested that the *LTV* analogy was irrelevant, because:

> "A proposal of settlement surely does not make law, especially in light of the serious anti-competitive factors involved in the underlying case; moreover, the prohibition under the meat packers decree to which Greyhound points comes under the heading of 'miscellaneous articles' (A. 33) and does not involve the food prohibitions that are central to the decree."

The disguise of protecting the integrity of a decree is thus removed. The decree pointedly prohibits packers from processing or selling steel products and certain food items. LTV owns a packer and a steel processor. Greyhound owns a packer and another company that is in the food service business. Each company has precisely the same "relationship". One violates the Decree, one does not. The omniscience of the Justice Department distinguishes between these two situations, based upon how anti-competitive the Justice Department thinks the situation is.

The lesson of the LTV settlement is not in creating a "Government estoppel" but rather in defining the principles which will be adopted if the Government's position is accepted.

First, Rule 65(d) is amended. Anti-trust injunctions apply to future controlling, investing stockholders and all successors in interest with, or without, appropriate language in the decree.

Second, this amendment to Rule 65(d) applies in some circumstances and not in others, depending upon an examination of the Government's purpose in entering into

the decree. That analysis is unilateral, made privately by the Government, without reference to any other purposes.

Third, the amendment to Rule 65(d), assuming an appropriate purpose is determined by the Government, applies if it discerns anti-competitive effects will flow from control by certain stockholders.

Greyhound respectfully requests this Court to affirm the well-reasoned judgment of the District Court. Judge Hoffman pointedly observed that the Government is "not seeking to enjoin Greyhound from committing any violation of the anti-trust laws * * * Nor is the Government seeking to prevent a violation of the 1920 Consent Decree by Armour." The Court appropriately quoted from Rule 65(d) and properly concluded: "This rule states what has long been accepted, that an injunction binds only those who are parties to the action." Judge Hoffman conceded that non-parties can "aid and abet" a party in violating the injunction but concluded: "The Government has not charged that Greyhound has or threatens to cause or assist Armour, or any of the original defendants, in dealing in any of the lines of commerce prohibited to them by the decree."

The decree—no decree—binds future investing stockholders. The law has been settled that decrees do not run against the world. Moreover, they do not apply to successors and assigns unless, by the terms of the decree, such a provision is included. The excuse for a wholesale amendment to Rule 65(d) is non-existent and requires the gross assumption that certain corporations, but for this case, will flagrantly violate certain antitrust decrees. The LTV analogy is controlling and shows that the Government's primary objective is not preserving the sanctity of the decree or curtailing make-believe circumvention routes since LTV is a classic example of what Greyhound supposedly invented. Moreover, the LTV settlement is an interpretation of the language of the decree by one of the parties—the Government—and is useful for construction of the language.

VI.

IF THIS COURT SHOULD DETERMINE THAT THE DISTRICT COURT ERRED IN DISMISSING THE GOVERNMENT'S PETITION AND REMANDS, THEN IT SHOULD STATE THE ISSUES STILL OPEN IN THE DISTRICT COURT AND LAY DOWN GUIDELINES FOR THEIR DETERMINATION.

If there is to be a remand this Court should lay down guidelines for issues still open for determination in the District Court. The Government concedes that "A non-party such as Greyhound is of course entitled to a hearing in the district court before such a supplemental order is issued against it." And Mr. Justice Douglas, dissenting in the *General Host* appeal (398 U. S. 268), said that on a remand there should be a "full hearing on the issue of interference."

Necessarily, this must mean the mere fact of Greyhound's control of Armour, which does not require a "hearing" to establish, while it simultaneously controls restaurant subsidiaries, does not *per se* prove "interference" or "obstruction" of the purposes of the 1920 Decree.

The objective of Congress in enacting the Sherman Act was to insure a competitive business economy. *United States* v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533, 559 (1944). The 1920 Consent Decree was entered in furtherance of this objective. We suggest, therefore, that any issue of Greyhound's "interference" with the "purposes" of the 1920 Decree against Armour, because of Greyhound's simultaneous ownership of restaurant subsidiaries, should be resolved in the light of 1971, not 1920, conditions in the food industry, and the District Court should be free to determine whether that simultaneous ownership now promotes, rather than impairs, competition in the food industry.

The Government concedes that Greyhound could "adduce any special reasons why the situation in question should be allowed, notwithstanding the prohibition of the existing decree; such a showing would ordinarily be like the showing that Armour itself as a Greyhound subsidiary would make if it sought modification of the decree" (p. 34).

Stringent tests for modification as against the consenting parties were laid down by this Court in 286 U. S. 106, and Judge Hoffman in 189 F. Supp. 885, 892 (N. D. Ill.), aff'd 367 U. S. 909, despite the lapse of 40 years and fundamental changes in the food industry. We respectfully submit, however, that Greyhound, a non-consenter, should not be required to make the same showing in order to obtain modification as those who consented so as to avoid possible criminal prosecution, the *prima facie* effect that an adverse litigated decree would have had in treble damage actions, or for any other reasons. The element of the Packers' consents was strongly stressed by Mr. Justice Cardozo, when, in denying modification, he stated for this Court that, "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation *with the consent of all concerned.*" 286 U. S. at 119 (Italics added.) The Decree enjoined the consenting parties from engaging in many lawful businesses. The packers, in particular, were enjoined from dealing in groceries and selling meats at retail. Why should one, who more than fifty years later, acquires control of a packer, and which also desires to engage in lawful businesses which are supposedly forbidden to the Packers, be required to make the same showing as a Packer before modification will be granted? The policy considerations that require a very strong showing to be made before a Court will modify a decree at the behest of a party who consented, or who

litigated and lost, have no application to one who merely acquires control of that party half a century later.

The Government also states that, "it is open to Greyhound to seek to show that it is not in the forbidden food lines" (Br. 33). No controversy exists over the fact that Greyhound does presently own two subsidiaries engaged in the restaurant business. Hence, this sentence can only mean that it is still open to Greyhound to prove, by whatever relevant evidence that still may be available, that it was not the intention of the Decree to enjoin the Packers from engaging in the restaurant business. The Court should make this clear.

Finally, if "interference" is found, then a hearing should be held to fashion a remedy which balances any claimed injury to the public interest by Greyhound's ownership of Armour against the economic harm to Greyhound and its shareholders that would result from divestiture of Armour. Greyhound now has an investment in Armour worth approximately $450,000,000. Divestiture of Armour would result in severe economic losses to Greyhound. If the vice of Greyhound's ownership of Armour lies in the fact that it also owns restaurant subsidiaries, that vice can be completely eradicated with much less harm to Greyhound by giving it the right to elect to divest itself of these subsidiaries. We take it that that is what the Government has in mind when it states that the District Court should determine for itself whether "to allow Greyhound to divest itself of its food subsidiaries other than Armour, in which event the government would not object to the retention of Armour" (p. 34).

CONCLUSION.

Greyhound respectfully prays that the judgment of the District Court be affirmed.

Respectfully submitted,

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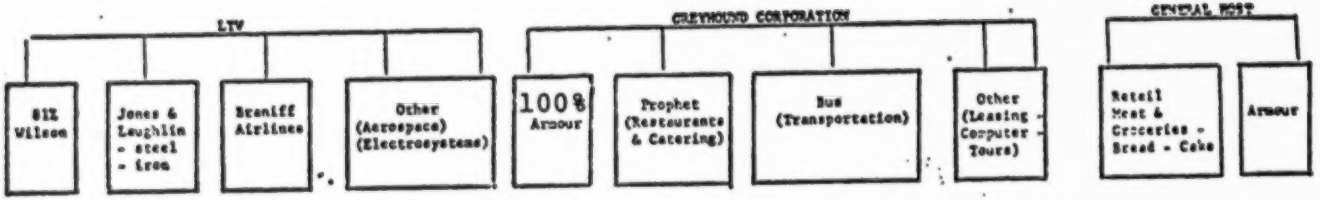

Total Sales	$3,750,000,000	Total Sales	$2,823,000,000	Total Sales	$2,353,000,000
Packer (Wilson)	1,286,000,000	Packer (Armour)	2,153,000,000	Packer (Armour)	2,153,000,000
Other Businesses	2,464,000,000	Other Businesses	670,000,000	Other Companies	200,000,000
Decree Products (Iron and steel)	1,056,000,000	Decree Products (Restaurants)	124,000,000	Decree Products (Food Stores & Bread - Baking)	203,000,000
% of Decree Products to All Other Businesses Excluding Wilson	43%	% of Decree Products to All Other Businesses Excluding Armour	18%	% of Decree Products To All Other Businesses Excluding Armour	100%

EXHIBIT A.

APPENDIX.

Provisions Enjoining a Corporate Defendant from Permitting its Directors, Officers, and Other Employees to Serve with or Have an Interest in a Business Forbidden to the Corporate Defendant.

U. S. v. *Curtis Circulation Co., Inc.*, 1967 Trade Cases ¶72,279 (D. N. J.):

VI.

[Acquisitions Between Defendants]

* * * * *

(C) Each of the defendants Curtis and Select is enjoined and restrained for a period of ten (10) years from knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, as an officer, director, agent or employee of any other national distributor, or of any wholesaler in which any other national distributor has any control or any financial or other interest.

United States v. *General Motors Corp.*, 1965 Trade Cases ¶71,624 (E. D. Mich.):

IV.

[Prohibited Practices]

Defendant is hereby enjoined from:

* * * * *

(B) Thirty days after knowledge thereof, having or allowing to serve as an officer or director of defendant, or as a staff head or bus sales executive or bus sales representative of the GMC Truck & Coach Division any individ-

ual whom it knows to own a material share of the total outstanding stock of any manufacturer of buses or of any person whose principal business is that of bus operator;

(C) Thirty days after knowledge thereof, having or allowing to serve as an officer or director of defendant, or as a staff head or bus sales executive or bus sales representative of the GMC Truck & Coach Division any individual whom it knows to be an officer or director of any manufacturer or buses or any person whose principal business is that of bus operator.

United States v. *America Corporation and Republic Corporation*, 1963 Trade Cases ¶ 70,923 (S. D. Cal.):

IV.

[Practices Prohibited]

Defendant Republic is enjoined and restrained from permitting any of its officers, directors, agents or employees to serve also, at the same time, as an officer, director or agent, or employee of any other person engaged in professional film processing, except its own subsidiaries.

United States v. *Driver-Harris Co.*, 1961 CCH Trade Cases ¶ 70,031 (D. N. J.):

VIII.

[Exchange of Information—Interlocking Interests]

Each consenting defendant is enjoined and restrained from, directly or indirectly:

• • • • •

(B) Permitting any of its officers, directors, agents or employees to serve simultaneously as an officer, director, agent or employee of any other manufacturer not a subsidiary of the defendant;

(C) Except for the purchase and sale of products bought and sold in the normal course of business,

• • • • •

(2) knowingly permitting any of its officers, directors, or managerial or policy-making agents or employees to acquire or hold, directly or indirectly, any of the assets or capital stock of, or any financial interest in, any other defendant or any person which becomes a manufacturer, or to acquire, directly or indirectly, any of the assets or capital stock of, or any financial interest in, any manufacturer.

United States v. *United Fruit Co.*, 1958 Trade Cases ¶68,941 (E. D. La.):

VIII.

[Creation of New Company]

• • • • •

(D) The term "Eligible Person" as used in this Final Judgment shall mean any individual, group or business organization, other than Standard Fruit and Steamship Company, that is not owned or controlled by United and in which United has no stock interest directly or indirectly and that makes a showing that it intends to engage in the importation of bananas into the United States.

• • • • •

IX.

[Interlocking Directorates—Stock Acquisitions]

After United has completed its compliance with Article VIII above,

(1) No member of the board of directors of United, or any officer or employee thereof shall hold any office or

have any employment or contractural relation with the New Company or Eligible Person, directly or indirectly.

United States v. *Loew's Inc.*, 1950-1951 Trade Cases ¶ 62,861 (S. D. N. Y.):

VI.

[Reorganization]

• • • • •

The by-laws of National Theatres Corporation or of the New Theatre Company shall provide that a person affiliated with any other motion picture theatre circuit cannot be elected an officer or a director unless he has been approved by the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and the Court, and that in no event can officer or a director be affiliated with any motion picture theatre circuit (other than the Twentieth Century-Fox defendants) which has been a defendant in an antitrust suit brought by the Government, relating to the production, distribution, or exhibition of motion pictures. The by-laws of Twentieth Century-Fox Film Corporation or of the New Production Company shall provide that a person who is a director, officer, agent, employee, or substantial stockholder of another motion picture distribution company cannot be elected an officer or a director.

• • • • •

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* ARMOUR & CO. ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 759. Argued April 19, 1971—Decided June 1, 1971

The ownership of the majority of the stock of Armour & Co., a meat packer, by Greyhound Corp., which has retail food subsidiaries and accordingly engages in business that may be forbidden to Armour by the Meat Packers Consent Decree of 1920, in itself and without any evidentiary showing as to the consequences, does not violate the Decree's prohibition against Armour "directly or indirectly . . . engaging in or carrying on" the forbidden business. Pp. 2–11.

Affirmed.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and HARLAN and STEWART, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN and WHITE, JJ., joined. BLACK and BLACKMUN, JJ., took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 759.—October Term, 1970

United States, Appellant, *v.* Armour & Co. and Greyhound Corporation.	On Appeal from the United States District Court for the Northern District of Illinois.

[June 1, 1971]

Mr. Justice Marshall delivered the opinion of the Court.

Here as in *United States* v. *Armour & Co.*, 398 U. S. 268, we have been asked to determine if the Meat Packers Consent Decree of 1920, which prohibits Armour & Co. from dealing directly or indirectly in certain specified commodities, prohibits a corporation that may deal in some of those specified commodities from acquiring a controlling interest in Armour. When this decree was here last Term the Government was seeking to prevent General Host, a company engaged in the manufacture and sale of a variety of food products, from acquiring control of Armour. While that case was pending, General Host agreed to sell its interest in Armour to Greyhound, Corp., a regulated motor carrier. After the required approval was obtained from the Interstate Commerce Commission, the transaction was consummated. This Court then dismissed the action against General Host as moot. 398 U. S. 268.

The Government then proceeded against Greyhound as it had against General Host and filed a petition in the District Court alleging that Greyhound's engagement in businesses[1] forbidden to Armour or any firm in which

[1] The Government claims that two of Greyhound's wholly owned subsidiaries are engaged in the retail food business. Prophet Foods Co., an industrial catering company, operates eating facilities in

Armour has a direct or indirect interest, and that Greyhound's ownership of Armour creates a relationship forbidden by the 1920 Consent Decree. The District Court, as it had when General Host's ownership of Armour was at issue, held that the Consent Decree did not prohibit such acquisitions. The Government appealed.

This case does not involve the question whether the acquisition of a majority of Armour stock by Greyhound is illegal under the antitrust laws. If the Government had wished to test that proposition, it could have brought an action to enjoin the acquisition under § 7 of the Clayton Act, 15 U. S. C. § 18. Alternatively, if the Government believed that changed conditions warranted further relief against the acquisition, it could have sought modification of the Meat Packers Decree itself.[2] It took neither of those steps, but rather sought to enjoin the acquisition under the decree as originally written. Thus the case presents only the narrow question whether ownership of a majority of stock in Armour by a company that engages in business forbidden to Armour by the decree, in itself and without any evidentiary showing as to the consequences, violates the prohibition against Armour "directly or indirectly . . . engaging in or carrying on" that forbidden business.

On February 27, 1920, the United States filed a bill in equity against the Nation's five largest meatpackers, including Armour, and against their subsidiary corpora-

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industrial plants, schools, hospitals, nursing homes, and other commercial establishments. In 1968 Prophet's sales were in excess of $77 million. Post Houses, Inc., operates restaurants in bus stations and at rest and meal stop locations. Post House had sales in excess of $33 million in 1968.

[2] See *Chrysler Corporation* v. *United States*, 316 U. S. 556 (1942); and see generally Note, Flexibility and Finality in Antitrust Consent Decrees, 80 Harv. L. Rev. 1303 (1967).

tions and controlling stockholders, charging conspiratorial and individual attempts to monopolize a substantial part of the Nation's food supply. The bill alleged that the packers, from their initial position of power in the slaughtering and packing business, had acquired control of the Nation's stockyards, stockyard terminal rail lines, refrigerated rolling stock, and cold storage facilities, and that they had used predatory practices to eliminate competition in the food business.

The bill further alleged that the packers, having gained monopoly power in the meat business, were attempting to destroy competition in products which might be substituted for meat. That objective was being pursued through the acquisition of nonmeat food companies and by means of exclusive output contracts with suppliers. The prayer for relief sought, along with other prohibitions against the defendants' attempts to monopolize, the divestiture of most of their nonpacking operations and the permanent exclusion of them from the substitute food business.

On the same day as the complaint was filed, defendants filed their answer, denying its essential allegations, and both sides filed a stipulation to a consent decree, granting the Government the largest part of the relief it had sought. Paragraph Fourth of the decree enjoined the corporate defendants, including Armour, from "either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise . . . the manufacturing, jobbing, selling . . . distributing, or otherwise dealing in" a long list of food and other products sold by grocery stores. Paragraph Fourth further enjoined the corporate defendants from "owning, either directly or indirectly . . . any capital stock or other

interest whatsoever" in any business which dealt in these commodities.[3]

Paragraph Eighteenth of the decree provided that the court should retain jurisdiction of the case "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

Since 1920, the decree has withstood a motion to vacate it in its entirety, *Swift & Co.* v. *United States*, 276 U. S. 311 (1928), and two attempts on the part of the defendants to have it modified in light of alleged changed circumstances. *United States* v. *Swift & Co.*, 286 U. S. 106 (1932); *United States* v. *Swift & Co.*, 189 F. Supp. 885, 892 (ND Ill. 1960), aff'd, 367 U. S. 909 (1961). Thus the decree stood at the time this case arose, and still stands, as originally written.

The Government does not contend that Greyhound's acquisition of controlling interest in Armour subjects Greyhound to punishment for contempt since it was not a party to the decree. Nor does the Government contend that Greyhound has acted "in active concert or participation with" a party.[4] Instead, the Government argues that Greyhound should have been brought before the District Court, which retained permanent jurisdiction over the decree, pursuant to § 5[5] of the Sherman Act.

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[3] Paragraph Eighth made identical provisions with respect to certain dairy commodities.

[4] Fed. Rule Civ. Proc. 65 (d) provides:

"Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

[5] Section 5 of the Sherman Act, 15 U. S. C. § 5, provides:

"Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the

and be enjoined from acting to exercise control over or influence the business affairs of Armour, and be required to divest itself of the Armour stock.

The contention is that the acquisition violates the decree since it causes Armour to be engaged in activities prohibited by the decree. The claim is that Greyhound is engaged in businesses that the decree prohibits Armour from being engaged in and the decree's purported purpose of separating the meatpackers from the retail food business is thus circumvented.

But while structural separation of this kind may have been the Government's overall aim, the decree itself, carefully worked out between the parties in exchange for their right to litigate the issues, does not effect a complete separation, but rather prohibits particular actions and relationships not including the one here in question. The crucial provision, Paragraph Fourth, forbids the corporation defendants from "engaging in or carrying on" commerce in the enumerated product lines. This language, taken in its natural sense, bars only active conduct on the part of the defendants. Thus Armour could not trade in these products, either under its own corporate form, or through its "officers, directors, agents, or servants." The entry of Armour into the grocery business through subsidiaries is clearly and draconically prevented by the separate provision of Paragraph Fourth forbidding the defendant meatpackers from owning "any . . . interest whatsoever" [6] in a firm trading in

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ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof."

[6] That portion of Paragraph Fourth provides:

"[T]he corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning,

the enumerated commodities. In the Government's view these prohibitions also bar Armour from having any ownership relationship with corporations like Greyhound. The Government contends that Armour has an obligation not to engage directly or indirectly in legal or economic association with firms in the retail food business. It refers to the prohibited relationship between Armour and Greyhound.

But the decree does not speak in terms of relationships in general, but rather prohibits certain behavior, and in doing so prohibits some but not all economic interrelationship between Armour and the retail food business. Armour may not carry on or engage in that business, nor may it acquire any interest in any firm in that business, but there is no prohibition against it selling any interest to a grocery firm, or more generally against it entering into an ownership relationship with such a firm.[7] If the parties had agreed to such a prohibition, they could have chosen language which would have established the sort of prohibition that the Government now seeks.

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either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interests whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities."

[7] The Government contends that Paragraph Fourth prohibits Armour from *having* "any . . . interest whatsoever" in firms engaged in the prohibited businesses and that Armour as a subsidiary of Greyhound *has* an "interest" in the other Greyhound subsidiaries that are engaged in the retail food business. But Paragraph Fourth does not prohibit Armour from *having* any interest; it prohibits Armour from "owning" an interest. See n. 6, *supra*. Clearly, Armour has nothing approaching an ownership interest in Greyhound or Greyhound's subsidiaries.

If the parties had agreed to prohibit the kind of transaction here involved, that end could also have been accomplished through the provision of the decree running against the stockholders of the defendant meatpackers. Many of the controlling stockholders were defendants in the 1920 action, and the decree prohibits certain conduct on their part in Paragraph Fifth.[8] That paragraph prohibits the individual defendants from owning a half interest or more in any firm engaged in the product lines enumerated in Paragraph Fourth. This prohibition, through its negative implications, refutes the Government's argument that the decree established a complete structural separation between the defendant corporations and the retail food business. For it allows a controlling stockholder of a meatpacker to own a controlling, though not a majority, interest in a grocery firm—say 49% of the common stock, a figure which in all but the most unusual corporate situation would represent *de facto* control.

Perhaps more important, the prohibitions of Paragraph Fifth run only against the named stockholders and not against their successors and assigns. If a "suc-

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[8] Paragraph Fifth provides:

"That the individual defendants and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50% or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in . . . [specified products]."

cessors and assigns" clause had been included, the Government could argue with some persuasiveness that ownership of a meatpacker by a controlling interest in a retail food firm was prohibited. And the parties were able to use the words "successors and assigns" when they wanted to. Paragraph Third, which prohibits the corporate defendants from using their distribution facilities[5] to handle the commodities named in Paragraph Fourth, expressly runs against the corporations and their "successors and assigns."

In short, we do not find in the decree a structural separation such as the Government claims. On the one hand, the decree leaves gaps inconsistent with so complete a separation; on the other, language that would have been apt either to create a complete separation or to bar with particularity the sort of transaction involved here was not used.

Stepping back from this analysis of the terms of the 1920 decree, we are confronted with the Government's argument that to allow Greyhound to take over Armour would allow the same kind of anticompetitive evils which the 1920 suit was brought to prevent. In its 1920 suit, the Government sought to insulate the large meatpackers from the grocery business, both to prevent the destruction of competition in that business, and to prevent consolidation of the packers monopoly control of the meat business by controlling commerce in products which might be substitutes for meat. Those purposes, the Government says, are frustrated as much by a retail food company's acquisition of a meatpacker as they would be by a meatpacker's entry into the retail food business.

This argument would have great force if addressed to a court which had the responsibility for formulating original relief in this case, after the factual and legal issues raised by the pleadings had been litigated. It

might be a persuasive argument for modifying the original decree, after full litigation, on a claim that unforeseen circumstances now made additional relief desirable to prevent the evils aimed at by the original complaint.[9] Here, however, where we deal with the construction of an existing consent decree, such an argument is out of place.

Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation. Thus the *decree* itself cannot be said to have a purpose; rather the *parties* have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve.[10] For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. Because the defendant has, by the decree, waived his right to litigate the issues raised, a right guaranteed to him by the Due Process Clause, the conditions upon which he has given that waiver must be respected, and the instrument must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation.

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[9] See sources cited in n. 2, *supra*.

[10] Cf. Note, Flexibility and Finality, n. 2, *supra*, at 1314–1315.

This Court has recognized these principles before. In *Hughes* v. *United States*, 342 U. S. 353 (1952), the Government sought to construe a consent decree that gave the defendant the option of selling his stock or putting it in a voting trust as requiring him to sell the stock within a reasonable time even though he chose the voting trust alternative, because the pro-competitive purpose of the decree would otherwise be frustrated. The Court responded:

> "It may be true as the Government now contends that Hughes' large block of ownership in both types of companies endangers the independence of each. Evidence might show that a sale by Hughes is indispensable if competition is to be preserved. However, in section V the parties and the District Court provided their own detailed plan to neutralize the evils from such ownership. Whatever justification there may be now or hereafter for new terms that require a sale of Hughes' stock, we think there is no fair support for reading that requirement into the language of section V." 342 U. S., at 357.

In *United States* v. *Atlantic Refining Co.*, 360 U. S. 19 (1959), the Government sought an order limiting the dividends payable by common carriers to shipper-owners, under a consent decree that allowed such dividends to be paid according to a stated formula. Noting that the language in which the formula was expressed could "be made to support the United States' contention," but characterizing that construction as "strained," 360 U. S., at 22, the Court stated:

> "The Government contends that the interpretation it now offers would more nearly effectuate 'the basic purpose of the Elkins and Interstate Commerce Acts that carriers are to treat all shippers

alike.' This may be true. But it does not warrant our substantially changing the terms of a decree to which the parties consented without any adjudication of the issues." *Id.*, at 23.

And here too, although the relief the Government seeks may be in keeping with the purposes of the antitrust laws, we do not believe that it is supported by the terms of the consent decree under which it is sought.

Affirmed.

MR. JUSTICE BLACK and MR. JUSTICE BLACKMUN took no part in the consideration or the decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 759.—October Term, 1970

United States, Appellant, *v.* Armour & Co. and Greyhound Corporation.	On Appeal from the United States District Court for the Northern District of Illinois.

[June 1, 1971]

Mr. Justice Douglas, with whom Mr. Justice Brennan and Mr. Justice White concur, dissenting.

The antitrust decree before us last Term in *United States* v. *Armour & Co.*, 398 U. S. 268, is here again in a new posture. Under the original decree of 1920 the defendants were required to abandon their interests in a wide variety of food and nonfood lines. They were required to divest themselves of any interest in the businesses of "manufacturing, jobbing, selling, transporting . . . distributing, or otherwise dealing in" some 114 specified food products and some 30 other products. They were enjoined from "owning, either directly or indirectly, . . . any capital stock or other interest whatsoever in any corporation . . . which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, . . . distributing, or otherwise dealing in any" of the prohibited products. Under the decree the District Court retained jurisdiction "for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

Armour, one of the parties to the decree, is now the second largest meatpacker in the United States with total assets of almost $700 million and total sales in 1967

of approximately $2,150,000,000. In addition to meatpacking, Armour manufactures, processes, and sells various nonprohibited products. In early 1969 the Government filed a petition in Federal District Court to make General Host Corporation, a company engaged in the manufacture and sale of numerous food products, a party to the decree and forbid it from acquiring control of Armour. The District Court held that the decree prohibited Armour from holding any interest in a company handling any of the prohibited products but did not prohibit such a company from acquiring Armour. The Government appealed the decision arguing that acquisition by General Host of a majority of Armour's stock would be in violation of the decree and General Host should have been made a party to the decree so that an injunction could issue. We noted probable jurisdiction. 396 U. S. 811.

In the interim, General Host entered into an agreement to sell its controlling stock interest in Armour to Greyhound, a regulated motor carrier. The Interstate Commerce Commission approved the acquisition. Following Greyhound's acquisition, the Court dismissed the case as moot. 398 U. S. 268.

The Government then filed a new petition in the District Court alleging (as it had against General Host) that Greyhound is engaged in businesses forbidden to Armour, or any firm in which Armour has a direct or indirect interest, and therefore Greyhound's acquisition violates the decree. The petition prayed that Greyhound be brought before the Court under § 5 of the Sherman Act and that an order supplemental to the original decree be entered enjoining Greyhound from acquiring any additional stock or exercising control over or influencing the business affairs of Armour, and requiring Greyhound to divest itself of the Armour stock. The District Court dismissed the Government's complaint, ruling that since

Greyhound was not a party to the original decree, Greyhound may not be enjoined from "committing any acts on the ground that they are prohibited by the decree." The court also rejected the Government's argument that acquisition of the Armour stock placed the two companies in a "corporate relationship" which was prohibited by the decree. The court stated "the decree does not speak in terms of corporate relationships; it speaks in terms of the defendant delaying in the specified lines of commerce . . . ." The Government appealed.

The Sherman Act (15 U. S. C. § 5) provides:

> "Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshall thereof."

Under § 5 and the All Writs Act (28 U. S. C. § 1651 (a)) the District Court has ample power to prevent frustration of the original decree.

Greyhound may well have devised a plan which would render the original decree nugatory.

Under the decree, none of the meatpackers could own a chain of grocery stores. Yet under the interpretation of the District Court a chain of grocery stores could acquire a meatpacking company. I do not view the decree so narrowly. The evil at which the decree is aimed is combining meatpackers with companies in other food product areas.

The authorities support the proposition that judges who construe, interpret, and enforce consent decrees look at the evil which the decree was designed to rectify. See Note, Antitrust Consent Decrees, 80 Harv. L. Rev. 1303,

1315.* My interpretation of the evil at which this decree was aimed is the same as that of Mr. Justice Cardozo writing for this Court in *United States* v. *Swift & Co.*, 286 U. S. 106. As we stated in *Chrysler Corp.* v. *United States*, 316 U. S. 556, 562, the test for reviewing modifications is "whether the change served to effectuate or to thwart the basic purpose of the decree."

Neither *Hughes* v. *United States*, 342 U. S. 353, nor *United States* v. *Atlantic Refining*, 360 U. S. 19, relied on by the Court, is to the contrary. *Hughes* involved a government attempt to require the trustee to sell stock in a voting trust where the consent decree expressly allowed Hughes a choice of selling the stock himself or placing the stock in a voting trust "until Howard R. Hughes shall have sold his holdings of stock." *Atlantic Refining* was a case where for 16 years, right until the eve of the litigation, both parties had construed the decree in one way. Then the Government changed its interpretation not because it would effectuate the purposes of the decree but rather because it "would more nearly effectuate 'the basic purpose of the Elkins and Interstate Commerce Acts.'" 360 U. S., at 23.

The evil at which the present decree is aimed—combining meatpackers with companies in other food product areas—is present whether Armour purchases a company dealing in the various prohibited food lines or whether that company purchases Armour. When any company purchases Armour they acquire not only Armour's assets and liabilities, but also Armour's legal disabilities. And one of Armour's legal disabilities is that Armour cannot be combined with a company in the various food lines set out in the decree.

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*See the cases cited in Note, Modification of Consent Decrees, 75 Yale L. J. 657, 667–668 n. 56.

I read the decree to prohibit any combination of the meatpacking company defendants with companies dealing in various food lines.

In the District Court the Government offered an affidavit which showed that Greyhound deals in food products through its divisions and wholly owned subsidiaries, which provide industrial catering services and operates restaurants, cafeterias, and other eating facilities. The affidavit states that in 1969 Greyhound had revenues of about $124 million from food operations which accounted for over 16% of Greyhound's total revenues that year. Greyhound has contended that it operates no grocery business and only buys raw foodstuffs and sells prepared meals. Thus, Greyhound argues, it can acquire Armour even if it is made a party to the decree because the decree does not prohibit meatpackers from entering the restaurant business. I do not pass on this contention. Rather, I would reverse the judgment of the District Court and remand the case to that court for any further proceedings, which are necessary to determine if Greyhound's acquisition of Armour violates the decree. If it does, then the District Court would be directed to make Greyhound a party to that decree.